

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

**IN RE:**

**AOK CONSTRUCTION, LLC**

**Debtor.**

**KIRBY-SMITH MACHINERY, INC.,**

**Plaintiff,**

**v.**

**AOK CONSTRUCTION, LLC and  
CONTINENTAL ENERGY SERVICES,  
LLC,**

**Defendants.**

**-and-**

**BANK OF AMERICA, N.A.**

**Intervenor.**

**Case No. 09-34419**

**United States Bankruptcy Court,  
Southern District of Texas  
(Chapter 7)**

**Adv No. \_\_\_\_\_**

**Civ. Case No. CJ-2009-3493**

**NOTICE OF REMOVAL**

Intervenor, Bank of America, N.A. (the "Bank"), hereby gives notice of the removal of the captioned action pursuant to 28 U.S.C. §§ 1334 and 1452, WDOK LR 81.3 and Fed. R. Bankr. P. 9027, from the District Court within and for Oklahoma County, State of Oklahoma, to the United States Bankruptcy Court for the Western District of Oklahoma. As grounds for removal, the Bank states as follows:

**RELEVANT FACTUAL BACKGROUND**

1. The Bank is the successor to LaSalle Bank National Association ("LaSalle") as administrative agent and is one of the lenders in connection with a senior secured credit facility

(the “Loan”) governed by the terms of an Amended and Restated Credit Agreement, dated as of March 3, 2008 (the “Credit Agreement”), by and between defendant Continental Energy Services, LLC (“CES”) as borrower, LaSalle as administrative agent, issuing lender and lender, and Amegy Bank National Association (“Amegy”) and Compass Bank (“Compass”) as lenders.

2. The Credit Agreement was executed as an amendment to and restatement of an existing senior secured credit facility evidenced by a Credit Agreement dated March 9, 2008, by and between LaSalle as administrative agent, issuing lender, and lender, CES as borrower, and Compass and Amegy as lenders, for a credit facility up to the sum of \$42,000,000. The credit facility, which is the subject of the Credit Agreement, consists of existing and future indebtedness under term loans and revolving loans up to an aggregate amount in excess of \$47,500,000 (the outstanding amount of which is referred to collectively as the “Indebtedness”).

3. Pursuant to the terms of the Guaranty and Collateral Agreement dated as of March 9, 2007 (the “Security Agreement”), the Indebtedness is secured by among other things, (i) all of the personal property of CES and any proceeds from the sale or disposition of such property, and (ii) all of the personal property owned by, among other parties, defendant AOK Construction, LLC (“AOK”), and any proceeds from any sale or disposition of such personal property. The Bank’s security interest in the personal property of AOK, as referenced above, was perfected on or about March 14, 2007, by the filing of a UCC-1 financing statement with the Oklahoma Secretary of State.

4. The Bank agreed to allow CES and its affiliates (including AOK) to sell a portion of the collateral securing the Indebtedness in an advertised auction that took place on May 19, 2009, provided that all of the net proceeds of such auction were paid to the Bank to be applied to

the Indebtedness. CES, with the Bank's consent, engaged Richie Bros., an internationally known auction company, to advertise the auction and to conduct the auction.

5. The property sold at the May 19, 2009, auction consisted primarily of vehicles and equipment owned by CES's subsidiaries, including AOK. With the exception of approximately 9 vehicles, which are subject to a first lien held by First National Bank and the proceeds from the sale of which will be paid to First National Bank, all of the property that was sold is the Bank's collateral, which secured the Indebtedness pursuant to the terms of the Security Agreement. On information and belief, approximately one half of the property sold by Richie Bros. on May 19, 2009, was property owned by AOK, and the remainder was owned by Continental Energy Leasing, LLC, who is not a party to the captioned action. As of May 18, 2009, the total amount of the Indebtedness, after allowing all just and lawful offsets, payments and credits, and exclusive of accrued but unpaid interest, was \$34,500,000.

#### **RELEVANT PROCEDURAL BACKGROUND**

6. Plaintiff, Kirby-Smith Machinery, Inc. ("Kirby-Smith"), commenced the captioned action (the "State Court Action") on April 13, 2009, by filing a petition in Case No. CJ-2009-3493 in the District Court in and for Oklahoma County, State of Oklahoma (the "State Court"). On April 14, 2009, Kirby-Smith filed a First Amended Petition (the "Petition"), pursuant to which Kirby-Smith seeks a money judgment of \$730,683.24 against AOK and CES.

7. On May 1, 2009, Kirby-Smith filed a *Notice of Prejudgment Garnishment*. Therein, Kirby-Smith sought issuance by the Clerk of the State Court of a pre-judgment garnishment summons to be served on Richie Bros ("Summons"). The purported purpose of the Summons is to attach proceeds that Richie Bros. received from the sale of the Bank's collateral at the May 19, 2009, auction. As noted, only approximately one half of the property sold at auction consisted of AOK's property. None of defendant CES' property was sold at the auction.

8. On May 28, 2009, the State Court entered an *Agreed Order Authorizing Issuance of Plaintiff's Prejudgment Garnishment Without An Undertaking* (the "Agreed Order"). Pursuant thereto, the State Court issued the Summons on May 28, 2009, and served the Summons on Richie Bros. The Summons required Richie Bros., within ten (10) days of service of the Summons on it, or June 9, 2009, to pay to Kirby-Smith's attorney the sum of \$730,638.24, together with costs of the principal action and costs of the garnishment proceeding (the "Garnished Proceeds").

9. On June 5, 2009, the Bank filed an *Unopposed Motion to Intervene* in the State Court Action for the purpose of asserting its interest in the Garnished Proceeds. On June 17, 2009, the State Court entered an *Agreed Order Granting Bank of America's Motion to Intervene and Authorizing Disbursement of Garnished Funds*. Pursuant to the Agreed Order, Richie Bros. was authorized and directed to disburse the Garnished Proceeds to the Bank subject to further orders of the State Court.

10. On June 10, 2009, Richie Bros. filed its Answer to the Summons, stating that it was holding the Garnished Proceeds (in the amount of \$783,000) and had been directed by AOK and Kirby-Smith to submit same to the Bank. The Garnished Proceeds are currently held in a segregated account at the Bank pending further order of the State Court.

11. On June 26, 2009, AOK filed a voluntary petition under chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas. David J Askanase was appointed as chapter 7 trustee. On June 29, 2009, a Suggestion of Bankruptcy was filed in the State Court.

### **BANKRUPTCY JURISDICTION**

12. As set forth above, at issue in the State Court Action is whether the Bank, pursuant to its security interest, Kirby-Smith, pursuant to its pre-judgment garnishment lien, or AOK, as the owner of the collateral sold by Richie Bros. at auction, has a superior interest in the Garnished Proceeds. Resolution of this issue constitutes a core proceeding, as it involves a determination of property of AOK's bankruptcy estate, the administration of AOK's bankruptcy estate, the allowance or disallowance of claims against the estate, and the determination of the validity, extent and priority of the parties' various lien and interests in the Garnished Proceeds. *See* 28 U.S.C. §§ 157(b)(2)(A), (b)(2)(B), (b)(2)(K).<sup>1</sup>

13. Therefore, the State Court Action "arises in," or alternatively, is "related to" the chapter 7 bankruptcy case of AOK and is subject to this Court's bankruptcy jurisdiction, as authorized by 28 U.S.C. § 1334(b) (stating that federal district courts have "original jurisdiction of all civil proceedings ... arising in or relating to cases under title 11"). Cases subject to such jurisdiction are removable under the authority of 28 U.S.C. § 1452(a) ("A party may remove any claim or cause of action ... to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title").

14. Unanimous consent of all parties to the State Court Action is not required for removal under 28 U.S.C. § 1452. *E.g., Creasy v. Coleman Furniture Corp.*, 763 F.2d 655 (4th Cir. 1985). Accordingly, this Notice of Removal is timely and properly filed pursuant to Fed. R. Bankr. P. 9027(a)(3).

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<sup>1</sup> To the extent that this Court determines that the State Court Action is a non-core proceeding, the Bank consents to the entry of final orders and judgment by a bankruptcy judge.

**NOTICE**

15. Pursuant to Rule 9027(b) of the Federal Rules of Bankruptcy Procedure, the Bank is serving counsel for AOK, CES and Kirby-Smith with this Notice of Removal per the attached Certificate of Service. Additionally, pursuant to Fed. R. Bankr. P. 9027(b), the Bank has prepared and filed a Notice of Filing of Removal with the Clerk of the State Court.

16. The filing of the Notice of Removal operates to effect the removal of the State Court Action pursuant to Rule 9027(c) of the Federal Rules of Bankruptcy Procedure.

**PROCESS AND PLEADINGS**

17. The pleadings filed to date in the State Court Action are attached hereto as **Exhibits 1-12** and incorporated herein by reference.

**RESERVATION**

18. No admission of fact, law, or liability is intended by this Notice of Removal, and all defenses, motions, counterclaims and pleas are expressly reserved.

**WHEREFORE**, Kirby-Smith is hereby notified to proceed no further in the State Court Action.

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Dated this 8th day of July, 2009.

Respectfully submitted:

**HALL, ESTILL, HARDWICK, GABLE,  
GOLDEN & NELSON, P.C.**

By: /s/ Larry G. Ball  
Larry G. Ball, OBA #12205  
Seth A. Day, OBA #20670  
100 North Broadway, Suite 2900  
Oklahoma City, Oklahoma 73102-8865  
Telephone: (405) 553-2828  
Facsimile: (405) 553-2855

-and-

Thomas A. Creekmore III, OBA #2011  
John T. Richer, OBA #19554  
320 South Boston, Suite 200  
Tulsa, Oklahoma 74103-3706  
Telephone: (918) 594-0400  
Facsimile: (918) 594-0505

**COUNSEL FOR BANK OF AMERICA, N.A.**

**CERTIFICATE OF SERVICE**

I, John T. Richer, certify that on the 8th day of July, 2009, I served a copy of the Notice of Removal by facsimile and First Class Mail, postage prepaid, to the following:

Clay P. Booth  
Kline and Kline, et al.  
720 N.E. 63rd Street  
Oklahoma City, OK 73105

James K. Larimore  
Durbin, Larimore & Bialick, PC  
920 North Harvey  
Oklahoma City, OK 73102

Warren F. Bickford  
Fellers, Snider, et al.  
100 N. Broadway, Ste. 1700  
Oklahoma City, OK 73102

/s/ Larry G. Ball



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**IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA**

**Kirby-Smith Machinery, Inc.,**

Plaintiff,

V.

**AOK Construction, LLC, and  
Continental Energy Services, LLC,**

**Defendants.**

FILED IN THE DISTRICT COURT  
OKLAHOMA COUNTY, OKLA.

APR 13 2009

PATRICIA PRESLEY, COURT CLERK  
by [Signature]  
DEPUTY

Case No.

CJ - 2009 - 3493

**PETITION**

### FIRST CAUSE OF ACTION

Plaintiff, Kirby-Smith Machinery, Inc., an Oklahoma corporation (“Plaintiff” or “Kirby-Smith”), for its First Cause of Action against Defendant, AOK Construction, LLC, a Oklahoma limited liability company (“AOK Construction”), states:

1. On or about June 19, 2007, a certain credit application, which is attached hereto as Exhibit "A," was signed and delivered to Kirby-Smith pursuant to which Kirby-Smith opened a commercial credit account in the name of AOK Construction for the purpose of charging the rental of cranes, heavy equipment, and industrial equipment from Kirby-Smith and charging parts, goods, labor, and services from Kirby-Smith.
2. Based on said commercial credit account and as set forth on Kirby-Smith's statement of account, which is attached hereto as Exhibit "B," Kirby-Smith rented a certain heavy equipment and accessories therefor; provided certain parts and goods; and provided repair services, including related parts, goods and labor.
3. AOK Construction is indebted to Kirby-Smith as set forth on Kirby-Smith's statement of account, Exhibit "B," for equipment rental charges and other charges related thereto,



including accessories, taxes, delivery fees, parts, goods, and services; for parts and goods; and for repair services, including related parts, goods and labor, in the sum of \$730,683.24, with prejudgment and postjudgment interest on said sum at the contract rate of 18.00% per annum from and including April 1, 2009, until paid, and for all costs, accrued and accruing, including a reasonable attorneys' fee for Kirby-Smith's attorneys, which account, Exhibit "B," is correct and which amounts are just, due, and owing by AOK Construction to Kirby-Smith.

WHEREFORE, Plaintiff, Kirby-Smith Machinery, Inc., an Oklahoma corporation, prays judgment against Defendant, AOK Construction, LLC, an Oklahoma limited liability company, on its First Cause of Action in the sum of \$730,683.24, with prejudgment and postjudgment interest on said sum at the contract rate of 18.00% per annum from and including April 1, 2009, until paid; for all costs, accrued and accruing, including a reasonable attorneys' fee for the plaintiff's attorneys; and for such other and further relief as this Court deems just and equitable.

## **SECOND CAUSE OF ACTION**

Kirby-Smith, for its Second Cause of Action against Defendant, Continental Energy Services, LLC, a Delaware limited liability company ("Continental"), states:

4. Kirby-Smith adopts, realleges, restates and incorporates herein by reference all statements and allegations of Kirby-Smith's First Cause of Action as if fully set forth herein.

5. Continental took the place of, and the assets of, AOK Construction. That there was a consolidation or merger of AOK Construction and Continental.

6. Continental agreed to assume and pay the indebtedness referred to above to Kirby-Smith.

7. Continental was, and is, a continuation of AOK Construction.

8. AOK Construction's transfer of all its property, real and personal, to Continental was fraudulent within the meaning of the Oklahoma Fraudulent Transfer Act, 24 O.S. §§ 112 to 123.

9. Continental is the alter ego of AOK Construction.

WHEREFORE, Plaintiff, Kirby-Smith Machinery, Inc., prays judgment against Defendants, Continental Energy Services, LLC, a Delaware limited liability company, on its Second Cause of Action in the sum of \$730,683.24, with prejudgment and postjudgment interest on said sum at the contract rate of 18.00% per annum from and including April 1, 2009, until paid; for all costs, accrued and accruing, including a reasonable attorneys' fee for the plaintiff's attorneys; and for such other and further relief as this Court deems just and equitable.

### **THIRD CAUSE OF ACTION**

Kirby-Smith, for its Second Cause of Action against AOK Construction and Continental, states:

10. Kirby-Smith furnished valuable parts, goods, labor, and services to AOK Construction and Continental with a reasonable expectation of being compensated.

11. AOK Construction and Continental knowingly accepted the benefit of Kirby-Smith's parts, goods, labor, and services.

12. AOK Construction and Continental would be unfairly benefitted by receiving Kirby-Smith's parts, goods, labor, and services if no compensation were paid to Kirby-Smith.

13. The fair value of the parts, goods, labor, and services that Kirby-Smith furnished to AOK Construction and Continental is the sum of \$730,683.24, with prejudgment and postjudgment interest on said sum at the rate of 18.00% per annum from and including April 1, 2009, until paid, and for all costs, accrued and accruing, including a reasonable attorneys' fee for Plaintiff's attorneys, which amounts are just, due, and owing by AOK Construction and Continental to Kirby-Smith.

WHEREFORE, Plaintiff, Kirby-Smith Machinery, Inc., an Oklahoma corporation, prays judgment against Defendants, AOK Construction, LLC, an Oklahoma limited liability company, and Continental Energy Services, LLC, a Delaware limited liability company, on its Third Cause of Action in the sum of \$730,683.24, with prejudgment and postjudgment interest on said sum at the rate of 18.00% per annum from and including April 1, 2009, until paid; for all costs, accrued and accruing, including a reasonable attorneys' fee for the plaintiff's attorneys; and for such other and further relief as this Court deems just and equitable.

#### **FOURTH CAUSE OF ACTION**

Kirby-Smith, for its Fourth Cause of Action against AOK Construction and Continental, states:

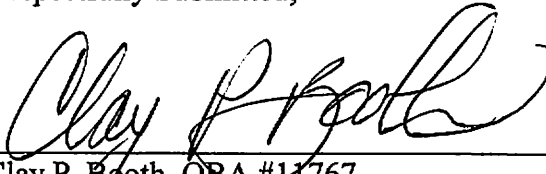
14. AOK Construction and Continental voluntarily accepted the benefits of Kirby-Smith's offer to obtain parts, goods, and services from Kirby-Smith when AOK Construction and Continental knew or should have known that Kirby-Smith made the offer intending to receive payment therefor.

15. As AOK Construction and Continental knew or should have known, and as shown by the statement of account, Exhibit "B," the specific benefit that Kirby-Smith intended to receive from AOK Construction and Continental is the sum of \$730,683.24, with prejudgment and postjudgment interest on said sum at the rate of 18.00% per annum from and including April 1, 2009, until paid, and for all costs, accrued and accruing, including a reasonable attorneys' fee for Plaintiff's attorneys, which amounts are just, due, and owing by AOK Construction and Continental to Kirby-Smith.

WHEREFORE, Plaintiff, Kirby-Smith Machinery, Inc., an Oklahoma corporation, prays judgment against Defendants, AOK Construction, LLC, an Oklahoma limited liability company, and

Continental Energy Services, LLC, a Delaware limited liability company, on its Fourth Cause of Action in the sum of \$730,683.24, with prejudgment and postjudgment interest on said sum at the rate of 18.00% per annum from and including April 1, 2009, until paid; for all costs, accrued and accruing, including a reasonable attorneys' fee for the plaintiff's attorneys; and for such other and further relief as this Court deems just and equitable.

Respectfully Submitted,



Clay P. Booth, OBA #11767

- for the firm -

KLINE, KLINE, ELLIOTT & BRYANT, P.C.

720 NE 63<sup>rd</sup> Street

Oklahoma City, OK 73105-6405

Telephone: (405) 848-4448

Facsimile: (405) 842-4539

Attorneys for Plaintiff, Kirby-Smith Machinery, Inc.

ATTORNEYS' LIEN CLAIMED

*Kirby-Smith Machinery, Inc. v. AOK Construction, LLC, et al.*  
Oklahoma County District Court  
Petition

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918429  
Credit Ap Update

# AOK CONSTRUCTION, LLC



**COMPANY NAME:** AOK CONSTRUCTION, LLC  
**MAILING ADDRESS:** P.O. BOX 306 MCALISTER, OK 74502  
**SHIPPING ADDRESS:** 9055 E. HWY 270, MCALISTER, OK 74502  
**OWNER'S NAME:** CONTINENTAL ENERGY SERVICES  
**TYPE OF BUSINESS:** UNDERGROUND PIPELINE  
**TAX ID#:** 73-1597809 **PO REQUIRED:** YES  
**BANK NAME:** LABALLE BANK N.A.  
**ADDRESS:** 136 S LABALLE CHICAGO, IL 60603  
**TELEPHONE #:** 312-904-9028 **CONTACT:** SEAN SILVER

**CREDIT REFERENCES:**

KIRBY SMITH MACHINERY  
PO BOX 270360  
OKC, OK 73137  
TELEPHONE: 405-495-7820  
FAX: 405-757-5973

NAPA AUTO  
PO BOX 67  
MCALISTER, OK 74501  
TELEPHONE #: 918-423-4026  
FAX #: 918-423-4783

WESTERN SUPPLIES  
BOX 561  
WICHITA FALLS, TX 76307  
TELEPHONE #: 840-565-3401  
FAX #: 840-565-7692

WARREN CAT  
DEPT 1844  
TULSA, OK 74182  
TELEPHONE #: 918-527-4600  
FAX #: 918-500-2392

PO Box 306 • 9055 E. Highway 270 • McAlester, OK 74502 • D18 429-1341 • Fax 918-429-1342  
aokconstruction11@earthlink.net

Dreg D. Karpinsky - Pres.

EXHIBIT

A

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# KIRBY-SMITH

## MACHINERY, INC.



Customer 918429  
AOK CONSTRUCTION, L.L.C.  
April 10, 2009  
Balance \$730,683.24

	Date	Invoice	Br	SD	Charges	Adjustments	Payments	Total
1.	11/30/07	SC032120	001		58.86			58.86
2.	12/06/07	R43642	002	R	8,534.54			8,534.54
3.	12/12/07	R43810	002	R	8,138.78			8,138.78
4.	12/25/07	R44185	002	R	4,883.27			4,883.27
5.	12/25/07	R44210	002	R	5,371.59			5,371.59
6.	12/31/07	SC032397	001		741.06			741.06
7.	1/22/08	R45179	004	R	4,812.42			4,812.42
8.	1/22/08	R45180	002	R	4,730.57			4,730.57
9.	1/22/08	R45181	002	R	6,348.24			6,348.24
10.	1/31/08	SC032651	001		1,653.81			1,653.81
11.	2/05/08	R45641	002	R	6,369.95			6,369.95
12.	2/29/08	SC032900	001		1,803.62			1,803.62
13.	3/31/08	SC033140	001		2,213.92			2,213.92
14.	4/30/08	SC033373	001		12,883.42			12,883.42
15.	5/17/08	T62111	002	C	4,216.43			4,216.43
16.	5/29/08	R49939	002	R	8,301.55			8,301.55
17.	5/29/08	R49957	004	R	4,851.00			4,851.00
18.	5/31/08	SC033621	001		14,999.29			14,999.29
19.	6/30/08	SC033859	001		4,488.03			4,488.03
20.	7/31/08	R52206	002	R	17,459.21	11,639.48-		5,819.73
21.	7/31/08	SC034081	001		5,732.59			5,732.59
22.	7/31/08	U52529	002	W	2,344.79			2,344.79
23.	8/05/08	R52316	002	R	4,883.27			4,883.27
24.	8/26/08	R53060	002	R	2,194.60			2,194.60
25.	8/31/08	SC034320	001		10,666.69			10,666.69
26.	9/05/08	R53603	002	R	162.78			162.78
27.	9/06/08	R53648	002	R	325.55			325.55
28.	9/09/08	R53676	002	R	218.00			218.00
29.	9/16/08	R53974	002	R	2,821.44	741.10-	2,821.44-	741.10-
30.	9/17/08	T66255	002	C	2,037.82			2,037.82
31.	9/23/08	R54126	002	R	7,433.41			7,433.41
32.	9/30/08	R54430	002	R	3,776.87			3,776.87
33.	9/30/08	SC034575	001		12,568.52			12,568.52
34.	10/04/08	R54621	002	R	3,808.95	3,808.95-	3,808.95	3,808.95
35.	10/07/08	R45174	002	R			4,883.27-	4,883.27-
36.	10/17/08	R55039	002	R	4,340.68	340.68-	4,340.68-	340.68-
37.	10/21/08	R55118	004	R	4,167.45	1,147.45-		3,020.00
38.	10/21/08	R55122	002	R	4,736.77			4,736.77
39.	10/24/08	R55346	002	R	5,635.50			5,635.50
40.	10/31/08	SC034824	001		4,930.54			4,930.54
41.	11/05/08	R55665	002	R	5,263.07		10,526.14-	5,263.07-
42.	11/14/08	R56082	002	R	4,340.68	340.68-	4,340.68-	340.68-
43.	11/18/08	R56161	002	R	7,433.41			7,433.41
44.	11/18/08	R56164	002	R	4,736.77			4,736.77
45.	11/19/08	R56242	002	R	6,348.24			6,348.24
46.	11/20/08	R56283	002	R	4,736.77			4,736.77
47.	11/21/08	R56353	002	R	5,635.50	1,874.89-	1,874.89	5,635.50

Remit to:

KSM Exchange, LLC

P.O. Box 270360

Oklahoma City, OK 73127

TEL (405) 495-7820

FAX (405) 446-4444

EXHIBIT

B

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# KIRBY-SMITH

## MACHINERY, INC.



	Date	Invoice	Br	SD	Charges	Adjustments	Payments	Total
48.	11/22/08	R56368	004	R	4,812.42			4,812.42
49.	11/25/08	R56394	002	R	3,650.07			3,650.07
50.	11/25/08	R56395	002	R	4,883.27			4,883.27
51.	11/25/08	R56396	002	R	6,348.24	2,116.08-	2,116.08	6,348.24
52.	11/25/08	R56397	002	R	3,776.87			3,776.87
53.	11/25/08	R56400	002	R	5,371.59			5,371.59
54.	11/25/08	R56403	002	R	217.03			217.03
55.	11/25/08	R56476	002	R	3,808.95	3,808.95-	1,798.84	1,798.84
56.	11/25/08	R56477	002	R	325.55			325.55
57.	11/25/08	R56478	002	R	3,906.61			3,906.61
58.	11/25/08	R56479	002	R	4,730.57			4,730.57
59.	11/25/08	R56480	002	R	162.78			162.78
60.	11/25/08	R56481	002	R	217.50			217.50
61.	11/25/08	R56483	002	R	4,730.57	1,414.30-	1,414.30	4,730.57
62.	11/25/08	R56484	002	R	2,674.95			2,674.95
63.	11/25/08	R56485	002	R	1,551.79			1,551.79
64.	11/25/08	R56486	002	R	4,796.00	3,188.25-	3,188.25	4,796.00
65.	11/25/08	R56487	002	R	5,668.00			5,668.00
66.	11/26/08	R56504	004	R	4,851.00			4,851.00
67.	11/29/08	R56604	004	R	4,851.00			4,851.00
68.	11/30/08	SC035050	001		4,954.18			4,954.18
69.	12/04/08	R56640	002	R	4,883.27			4,883.27
70.	12/04/08	R56647	002	R	4,736.77			4,736.77
71.	12/04/08	R56651	002	R	8,534.54	5,689.69-		2,844.85
72.	12/04/08	R56663	002	R	4,796.00			4,796.00
73.	12/05/08	R53428	002				3,776.87-	3,776.87-
74.	12/05/08	R56785	002	R	5,642.88			5,642.88
75.	12/06/08	R56808	002	R	6,369.95			6,369.95
76.	12/06/08	T67308	002	C	2,998.51			2,998.51
77.	12/09/08	R56826	002	R	4,736.77			4,736.77
78.	12/09/08	R56828	002	R	4,883.27			4,883.27
79.	12/10/08	L15991	004	C	71.34			71.34
80.	12/10/08	R56890	002	R	6,348.24			6,348.24
81.	12/10/08	R56892	002	R	4,730.57			4,730.57
82.	12/10/08	R56894	002	R	8,138.78			8,138.78
83.	12/10/08	R56897	002	R	4,768.50			4,768.50
84.	12/11/08	R56927	002	R	6,348.24			6,348.24
85.	12/11/08	R56928	002	R	8,301.55			8,301.55
86.	12/12/08	R56984	002	R	4,000.00			4,000.00
87.	12/16/08	R57072	002	R	2,194.60			2,194.60
88.	12/16/08	R57075	002	R	4,736.77			4,736.77
89.	12/17/08	R57183	002	R	6,348.24	1,410.72-		4,937.52
90.	12/17/08	U53830	002	W	228.90			228.90
91.	12/18/08	R57228	002	R	4,736.77	4,274.77-	4,274.77	4,736.77
92.	12/19/08	R57283	002	R	2,682.29			2,682.29
93.	12/23/08	R57336	002	R	3,650.07			3,650.07
94.	12/23/08	R57337	002	R	4,883.27			4,883.27
95.	12/23/08	R57339	004	R	4,812.42			4,812.42
96.	12/23/08	R57340	002	R	3,776.87			3,776.87
97.	12/23/08	R57344	002	R	5,371.59			5,371.59
98.	12/23/08	R57345	002	R	217.03			217.03

Remit to:

KSM Exchange, LLC

P.O. Box 270360

Oklahoma City, OK 73127

TEL (405) 495-7820

FAX (405) 440-0112





# KIRBY-SMITH MACHINERY, INC.



	Date	Invoice	Br	SD	Charges	Adjustments	Payments	Total
99.	12/23/08	T69495	002	C	1,699.61			1,699.61
100.	12/23/08	U54193	002	W	349.61			349.61
101.	12/24/08	R57413	002	R	2,674.95			2,674.95
102.	12/24/08	R57434	002	R	1,551.79			1,551.79
103.	12/24/08	R57435	002	R	4,796.00	4,796.00-	2,239.96	2,239.96
104.	12/24/08	R57441	002	R	5,668.00			5,668.00
105.	12/24/08	R57444	002	R	325.55			325.55
106.	12/24/08	R57445	002	R	4,883.27			4,883.27
107.	12/24/08	R57446	002	R	3,906.61			3,906.61
108.	12/24/08	R57448	002	R	4,730.57			4,730.57
109.	12/24/08	R57449	002	R	162.78			162.78
110.	12/24/08	R57450	002	R	4,736.77	2,336.88-		2,399.89
111.	12/24/08	T69517	002	C	88.57			88.57
112.	12/24/08	T69519	002	C	602.07			602.07
113.	12/26/08	R57479	004	R	4,851.00			4,851.00
114.	12/30/08	R57500	002	R	217.50			217.50
115.	12/30/08	R57511	004	R	4,851.00	1,639.78-		3,211.22
116.	12/31/08	SC035295	001		6,673.94			6,673.94
117.	12/31/08	U53593	002	W	9,544.61			9,544.61
118.	1/06/09	R57699	002	R	6,369.95			6,369.95
119.	1/06/09	R57702	002	R	4,736.77			4,736.77
120.	1/06/09	R57707	002	R	4,883.27			4,883.27
121.	1/06/09	R57727	002	R	5,642.88			5,642.88
122.	1/07/09	R57804	002	R	6,348.24			6,348.24
123.	1/07/09	R57807	002	R	4,730.57			4,730.57
124.	1/07/09	R57812	002	R	4,768.50			4,768.50
125.	1/07/09	U53910	002	W	2,193.20			2,193.20
126.	1/08/09	R57851	002	R	6,348.24			6,348.24
127.	1/08/09	R57852	002	R	8,301.55			8,301.55
128.	1/09/09	R57889	002	R	4,000.00			4,000.00
129.	1/10/09	T69902	002	C	108.95			108.95
130.	1/13/09	R57959	002	R	2,194.60			2,194.60
131.	1/13/09	R57961	002	R	4,736.77			4,736.77
132.	1/16/09	R58117	002	R	2,682.29			2,682.29
133.	1/17/09	R58149	002	R	266.00			266.00
134.	1/20/09	R58172	002	R	3,650.07			3,650.07
135.	1/20/09	R58173	002	R	4,883.27			4,883.27
136.	1/20/09	R58175	002	R	3,776.87			3,776.87
137.	1/20/09	R58181	002	R	217.03			217.03
138.	1/21/09	R58232	002	R	2,674.95	1,182.84-		1,492.11
139.	1/21/09	R58234	004	R	126.00			126.00
140.	1/21/09	T70193	002	C	4,939.13			4,939.13
141.	1/22/09	R58252	002	R	3,906.61			3,906.61
142.	1/22/09	R58253	002	R	4,730.57			4,730.57
143.	1/22/09	R58255	004	R	4,812.42	2,408.57-		2,403.85
144.	1/23/09	R58278	002	R	162.78			162.78
145.	1/23/09	R58287	002	R	5,668.00			5,668.00
146.	1/23/09	U54329	002	W	3,444.17			3,444.17
147.	1/24/09	R58319	002	R	325.55			325.55
148.	1/24/09	R58320	002	R	574.00			574.00
149.	1/27/09	R58354	002	R	218.00			218.00

Remit to:

KSM Exchange, LLC

P.O. Box 270360

Oklahoma City, OK 73127

TEL (405) 495-7820

FAX (405) 440-0112





# KIRBY-SMITH

## MACHINERY, INC.



150.	1/27/09	R58357	002 R	1,551.79	1,036.34-	515.45
151.	1/27/09	T70365	002 C	618.66		618.66
152.	1/29/09	R58423	002 R	4,883.27		4,883.27
153.	1/30/09	R58459	002 R	5,642.88		5,642.88
154.	1/31/09	K80480	001 W	1,292.22		1,292.22
155.	1/31/09	SC035530	001	6,090.08		6,090.08
156.	1/31/09	T70158	002 C	495.28		495.28
157.	1/31/09	U54442	002 W	4,434.91		4,434.91
158.	1/31/09	U54476	002 W	1,313.85		1,313.85
159.	2/05/09	R58530	002 R	6,348.24	5,237.88-	1,110.36
160.	2/05/09	R58531	002 R	337.50		337.50
161.	2/05/09	R58534	002 R	4,730.57	4,388.57-	342.00
162.	2/05/09	R58538	002 R	4,883.27		4,883.27
163.	2/05/09	R58550	002 R	4,768.50	1,238.44-	3,530.06
164.	2/05/09	U54201	002 W	7,694.46		7,694.46
165.	2/05/09	U54444	002 W	11,731.53		11,731.53
166.	2/05/09	U54592	002 W	1,060.89		1,060.89
167.	2/10/09	R58695	002 R	2,194.60	1,920.17-	274.43
168.	2/10/09	R58696	002 R	4,736.77	243.93-	4,492.84
169.	2/10/09	R58697	002 R	112.50		112.50
170.	2/13/09	R54068	002 R		340.68-	340.68-
171.	2/13/09	R58842	002 R	1,804.45	1,727.95-	76.50
172.	2/13/09	R58644	002 R	2,682.29	2,596.79-	85.50
173.	2/14/09	U54730	002 W	2,864.27		2,864.27
174.	2/17/09	R58896	002 R	3,650.07	2,027.82-	1,622.25
175.	2/17/09	R58897	002 R	4,883.27	3,044.01-	1,839.26
176.	2/17/09	R58902	002 R	217.03		217.03
177.	2/18/09	U54344	002 W	6,019.56		6,019.56
178.	2/19/09	R58976	002 R	3,906.61	2,939.48-	967.13
179.	2/19/09	R58977	002 R	216.75		216.75
180.	2/19/09	U54439	002 W	1,507.19		1,507.19
181.	2/20/09	R59012	002 R	162.78		162.78
182.	2/20/09	R59018	002 R	5,668.00	5,533.00-	135.00
183.	2/21/09	R59038	002 R	325.55	108.52-	217.03
184.	2/26/09	R59161	002 R	67.50		67.50
185.	2/27/09	R59203	002 R	5,642.88	3,472.12-	2,170.76
186.	2/28/09	D08098	004 W	2,894.66		2,894.66
187.	2/28/09	SC035745	001	7,562.08		7,562.08
188.	2/28/09	U54841	002 W	3,020.23		3,020.23
189.	3/04/09	R59270	002 R	171.00		171.00
190.	3/04/09	U54543	002 W	6,412.74		6,412.74
191.	3/04/09	U54842	002 W	1,856.82		1,856.82
192.	3/06/09	U54196	002 W	2,836.63		2,836.63
193.	3/11/09	U54873	002 W	2,693.69		2,693.69
194.	3/13/09	U54886	002 W	6,205.09		6,205.09
195.	3/13/09	U54952	002 W	3,970.78		3,970.78
196.	3/14/09	U54665	002 W	7,927.91		7,927.91
197.	3/17/09	R59633	002 R	217.03		217.03
198.	3/19/09	R59703	002 R	216.75		216.75
199.	3/19/09	U54946	002 W	2,444.30		2,444.30
200.	3/24/09	U55037	002 W	3,255.51		3,255.51
201.	3/31/09	SC035955	001	7,383.77		7,383.77

Remit to:

KSM Exchange, LLC

P.O. Box 270360

Oklahoma City, OK 73127

TEL (405) 495-7820

FAX (405) 440-0112

FILED IN THE DISTRICT COURT  
 OKLAHOMA COUNTY, OKLA.

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
 STATE OF OKLAHOMA

APR 14 2009

PATRICIA PRESLEY, COURT CLERK  
 by [Signature]  
 DEPUTY

Kirby-Smith Machinery, Inc.,

Plaintiff,

v.

AOK Construction, LLC, and  
 Continental Energy Services, LLC,

Defendants.

Case No. CJ-2009-3493

**FIRST AMENDED PETITION**

**FIRST CAUSE OF ACTION**

Plaintiff, Kirby-Smith Machinery, Inc., an Oklahoma corporation ("Plaintiff" or "Kirby-Smith"), for its First Cause of Action against Defendant, AOK Construction, LLC, a Oklahoma limited liability company ("AOK Construction"), states:

1. On or about September 30, 2008, a certain credit application, which is attached hereto as Exhibit "A," was signed and delivered to Kirby-Smith pursuant to which Kirby-Smith opened a commercial credit account in the name of AOK Construction for the purpose of charging the rental of cranes, heavy equipment, and industrial equipment from Kirby-Smith and charging parts, goods, labor, and services from Kirby-Smith.

2. Based on said commercial credit account and as set forth on Kirby-Smith's statement of account, which is attached hereto as Exhibit "B," Kirby-Smith rented a certain heavy equipment and accessories therefor; provided certain parts and goods; and provided repair services, including related parts, goods and labor.

3. AOK Construction is indebted to Kirby-Smith as set forth on Kirby-Smith's statement of account, Exhibit "B," for equipment rental charges and other charges related thereto,

including accessories, taxes, delivery fees, parts, goods, and services; for parts and goods; and for repair services, including related parts, goods and labor, in the sum of \$730,683.24, with prejudgment and postjudgment interest on said sum at the contract rate of 18.00% per annum from and including April 1, 2009, until paid, and for all costs, accrued and accruing, including a reasonable attorneys' fee for Kirby-Smith's attorneys, which account, Exhibit "B," is correct and which amounts are just, due, and owing by AOK Construction to Kirby-Smith.

WHEREFORE, Plaintiff, Kirby-Smith Machinery, Inc., an Oklahoma corporation, prays judgment against Defendant, AOK Construction, LLC, an Oklahoma limited liability company, on its First Cause of Action in the sum of \$730,683.24, with prejudgment and postjudgment interest on said sum at the contract rate of 18.00% per annum from and including April 1, 2009, until paid; for all costs, accrued and accruing, including a reasonable attorneys' fee for the plaintiff's attorneys; and for such other and further relief as this Court deems just and equitable.

#### **SECOND CAUSE OF ACTION**

Kirby-Smith, for its Second Cause of Action against Defendant, Continental Energy Services, LLC, a Delaware limited liability company ("Continental"), states:

4. Kirby-Smith adopts, realleges, restates and incorporates herein by reference all statements and allegations of Kirby-Smith's First Cause of Action as if fully set forth herein.

5. Continental took the place of, and the assets of, AOK Construction. That there was a consolidation or merger of AOK Construction and Continental.

6. Continental expressly or implicitly agreed to assume or pay the indebtedness referred to above to Kirby-Smith.

7. Continental was, and is, a continuation of AOK Construction.

8. AOK Construction's transfer of all or substantially all its property to Continental was fraudulent in fact.

9. AOK Construction's transfer of all or substantially all its property to Continental was fraudulent within the meaning of the Oklahoma Fraudulent Transfer Act, 24 O.S. §§ 112 to 123.

10. Continental is the alter ego of AOK Construction.

WHEREFORE, Plaintiff, Kirby-Smith Machinery, Inc., prays judgment against Defendants, Continental Energy Services, LLC, a Delaware limited liability company, on its Second Cause of Action in the sum of \$730,683.24, with prejudgment and postjudgment interest on said sum at the contract rate of 18.00% per annum from and including April 1, 2009, until paid; for all costs, accrued and accruing, including a reasonable attorneys' fee for the plaintiff's attorneys; and for such other and further relief as this Court deems just and equitable.

### **THIRD CAUSE OF ACTION**

Kirby-Smith, for its Second Cause of Action against AOK Construction and Continental, states:

11. Kirby-Smith furnished valuable parts, goods, labor, and services to AOK Construction and Continental with a reasonable expectation of being compensated.

12. AOK Construction and Continental knowingly accepted the benefit of Kirby-Smith's parts, goods, labor, and services.

13. AOK Construction and Continental would be unfairly benefitted by receiving Kirby-Smith's parts, goods, labor, and services if no compensation were paid to Kirby-Smith.

14. The fair value of the parts, goods, labor, and services that Kirby-Smith furnished to AOK Construction and Continental is the sum of \$730,683.24, with prejudgment and postjudgment interest on said sum at the rate of 18.00% per annum from and including April 1, 2009, until paid,

and for all costs, accrued and accruing, including a reasonable attorneys' fee for Plaintiff's attorneys, which amounts are just, due, and owing by AOK Construction and Continental to Kirby-Smith.

WHEREFORE, Plaintiff, Kirby-Smith Machinery, Inc., an Oklahoma corporation, prays judgment against Defendants, AOK Construction, LLC, an Oklahoma limited liability company, and Continental Energy Services, LLC, a Delaware limited liability company, on its Third Cause of Action in the sum of \$730,683.24, with prejudgment and postjudgment interest on said sum at the rate of 18.00% per annum from and including April 1, 2009, until paid; for all costs, accrued and accruing, including a reasonable attorneys' fee for the plaintiff's attorneys; and for such other and further relief as this Court deems just and equitable.

#### **FOURTH CAUSE OF ACTION**

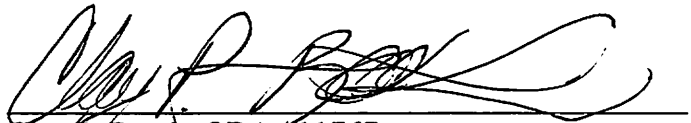
Kirby-Smith, for its Fourth Cause of Action against AOK Construction and Continental, states:

15. AOK Construction and Continental voluntarily accepted the benefits of Kirby-Smith's offer to obtain parts, goods, and services from Kirby-Smith when AOK Construction and Continental knew or should have known that Kirby-Smith made the offer intending to receive payment therefor.

16. As AOK Construction and Continental knew or should have known, and as shown by the statement of account, Exhibit "B," the specific benefit that Kirby-Smith intended to receive from AOK Construction and Continental is the sum of \$730,683.24, with prejudgment and postjudgment interest on said sum at the rate of 18.00% per annum from and including April 1, 2009, until paid, and for all costs, accrued and accruing, including a reasonable attorneys' fee for Plaintiff's attorneys, which amounts are just, due, and owing by AOK Construction and Continental to Kirby-Smith.

WHEREFORE, Plaintiff, Kirby-Smith Machinery, Inc., an Oklahoma corporation, prays judgment against Defendants, AOK Construction, LLC, an Oklahoma limited liability company, and Continental Energy Services, LLC, a Delaware limited liability company, on its Fourth Cause of Action in the sum of \$730,683.24, with prejudgment and postjudgment interest on said sum at the rate of 18.00% per annum from and including April 1, 2009, until paid; for all costs, accrued and accruing, including a reasonable attorneys' fee for the plaintiff's attorneys; and for such other and further relief as this Court deems just and equitable.

Respectfully Submitted,



Clay P. Booth, OBA #11767

- for the firm -

ATTORNEYS' LIEN CLAIMED

KLINE, KLINE, ELLIOTT & BRYANT, P.C.

720 NE 63<sup>rd</sup> Street

Oklahoma City, OK 73105-6405

Telephone: (405) 848-4448

Facsimile: (405) 842-4539

Attorneys for Plaintiff, Kirby-Smith Machinery, Inc.

*Kirby-Smith Machinery, Inc. v. AOK Construction, LLC, et al.*  
Oklahoma County District Court, Case No. CJ-2009-3493  
First Amended Petition

3890-088

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RAZORBACK CONCRETE

003/003

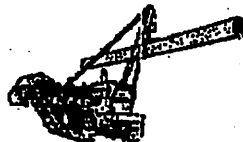
PAGE 03/03

002/002

09/30/2008 TUE 13:59 FAX 918 429 1342 AOK Construction

918429  
Credit Ap Update

## AOK CONSTRUCTION, LLC



COMPANY NAME: AOK CONSTRUCTION, LLC  
 MAILING ADDRESS: P.O. BOX 308 MCALESTER, OK 74502  
 SHIPPING ADDRESS: 9055 E. HWY 270, MCALESTER, OK 74502  
 OWNER'S NAME: CONTINENTAL ENERGY SERVICES  
 TYPE OF BUSINESS: UNDERGROUND PIPELINE  
 TAX ID#: 73-1597802 PO REQUIRED: YES  
 BANK NAME: LASALLE BANK N.A.  
 ADDRESS: 135 S LASALLE CHICAGO, IL 60603  
 TELEPHONE #: 312-904-9028 CONTACT: SEAN SILVER

**CREDIT REFERENCES:**  
 KIRBY SMITH MACHINERY  
 PO BOX 270380  
 OKC, OK 73137  
 TELEPHONE: 405-495-7820  
 FAX: 405-757-5973

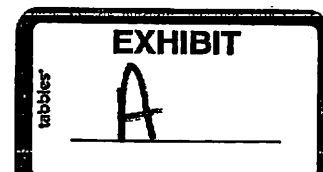
NAPA AUTO  
 PO BOX 67  
 MCALESTER, OK 74501  
 TELEPHONE #: 918-423-4026  
 FAX #: 918-423-4763

WESTERN SUPPLIES  
 BOX 561  
 WICHITA FALLS, TX 76307  
 TELEPHONE #: 840-855-3401  
 FAX #: 840-855-7592

WARREN CAT  
 DEPT 1944  
 TULSA, OK 74182  
 TELEPHONE #: 918-627-4500  
 FAX #: 918-600-2392

PO Box 308 • 9055 E. Highway 270 • McAlester, OK 74502 • 918 429-1341 • Fax 918-429-1342  
 aokconstructionlll@earthlink.net

Dreg D. Karpinsky - Pres.





# KIRBY-SMITH

## MACHINERY, INC.



Customer 918429  
AOK CONSTRUCTION, L.L.C.  
April 10, 2009  
Balance \$730,683.24

	Date	Invoice	Br	SD	Charges	Adjustments	Payments	Total
1.	11/30/07	SC032120	001		58.86			58.86
2.	12/06/07	R43642	002	R	8,534.54			8,534.54
3.	12/12/07	R43810	002	R	8,138.78			8,138.78
4.	12/25/07	R44185	002	R	4,883.27			4,883.27
5.	12/25/07	R44210	002	R	5,371.59			5,371.59
6.	12/31/07	SC032397	001		741.06			741.06
7.	1/22/08	R45179	004	R	4,812.42			4,812.42
8.	1/22/08	R45180	002	R	4,730.57			4,730.57
9.	1/22/08	R45181	002	R	6,348.24			6,348.24
10.	1/31/08	SC032651	001		1,653.81			1,653.81
11.	2/05/08	R45641	002	R	6,369.95			6,369.95
12.	2/29/08	SC032900	001		1,803.62			1,803.62
13.	3/31/08	SC033140	001		2,213.92			2,213.92
14.	4/30/08	SC033373	001		12,883.42			12,883.42
15.	5/17/08	T62111	002	C	4,216.43			4,216.43
16.	5/29/08	R49939	002	R	8,301.55			8,301.55
17.	5/29/08	R49957	004	R	4,851.00			4,851.00
18.	5/31/08	SC033621	001		14,999.29			14,999.29
19.	6/30/08	SC033859	001		4,488.03			4,488.03
20.	7/31/08	R52206	002	R	17,459.21	11,639.48-		5,819.73
21.	7/31/08	SC034081	001		5,732.59			5,732.59
22.	7/31/08	U52529	002	W	2,344.79			2,344.79
23.	8/05/08	R52316	002	R	4,883.27			4,883.27
24.	8/26/08	R53060	002	R	2,194.60			2,194.60
25.	8/31/08	SC034320	001		10,666.69			10,666.69
26.	9/05/08	R53603	002	R	162.78			162.78
27.	9/06/08	R53648	002	R	325.55			325.55
28.	9/09/08	R53676	002	R	218.00			218.00
29.	9/16/08	R53974	002	R	2,821.44	741.10-	2,821.44-	741.10-
30.	9/17/08	T66255	002	C	2,037.82			2,037.82
31.	9/23/08	R54126	002	R	7,433.41			7,433.41
32.	9/30/08	R54430	002	R	3,776.87			3,776.87
33.	9/30/08	SC034575	001		12,568.52			12,568.52
34.	10/04/08	R54621	002	R	3,808.95	3,808.95-	3,808.95	3,808.95
35.	10/07/08	R45174	002	R			4,883.27-	4,883.27-
36.	10/17/08	R55039	002	R	4,340.68	340.68-	4,340.68-	340.68-
37.	10/21/08	R55118	004	R	4,167.45	1,147.45-		3,020.00
38.	10/21/08	R55122	002	R	4,736.77			4,736.77
39.	10/24/08	R55346	002	R	5,635.50			5,635.50
40.	10/31/08	SC034824	001		4,930.54			4,930.54
41.	11/05/08	R55665	002	R	5,263.07		10,526.14-	5,263.07-
42.	11/14/08	R56082	002	R	4,340.68	340.68-	4,340.68-	340.68-
43.	11/18/08	R56161	002	R	7,433.41			7,433.41
44.	11/18/08	R56164	002	R	4,736.77			4,736.77
45.	11/19/08	R56242	002	R	6,348.24			6,348.24
46.	11/20/08	R56283	002	R	4,736.77			4,736.77
47.	11/21/08	R56353	002	R	5,635.50	1,874.89-	1,874.89	5,635.50

Remit to:

KSM Exchange, LLC

P.O. Box 270360

Oklahoma City, OK 73127

TEL (405) 495-7820

FAX (405) 444-4444

EXHIBIT

B





# KIRBY-SMITH MACHINERY, INC.



	Date	Invoice	Br	SD	Charges	Adjustments	Payments	Total
48.	11/22/08	R56368	004	R	4,812.42			4,812.42
49.	11/25/08	R56394	002	R	3,650.07			3,650.07
50.	11/25/08	R56395	002	R	4,883.27			4,883.27
51.	11/25/08	R56396	002	R	6,348.24	2,116.08-	2,116.08	6,348.24
52.	11/25/08	R56397	002	R	3,776.87			3,776.87
53.	11/25/08	R56400	002	R	5,371.59			5,371.59
54.	11/25/08	R56403	002	R	217.03			217.03
55.	11/25/08	R56476	002	R	3,808.95	3,808.95-	1,798.84	1,798.84
56.	11/25/08	R56477	002	R	325.55			325.55
57.	11/25/08	R56478	002	R	3,906.61			3,906.61
58.	11/25/08	R56479	002	R	4,730.57			4,730.57
59.	11/25/08	R56480	002	R	162.78			162.78
60.	11/25/08	R56481	002	R	217.50			217.50
61.	11/25/08	R56483	002	R	4,730.57	1,414.30-	1,414.30	4,730.57
62.	11/25/08	R56484	002	R	2,674.95			2,674.95
63.	11/25/08	R56485	002	R	1,551.79			1,551.79
64.	11/25/08	R56486	002	R	4,796.00	3,188.25-	3,188.25	4,796.00
65.	11/25/08	R56487	002	R	5,668.00			5,668.00
66.	11/26/08	R56504	004	R	4,851.00			4,851.00
67.	11/29/08	R56604	004	R	4,851.00			4,851.00
68.	11/30/08	SC035050	001		4,954.18			4,954.18
69.	12/04/08	R56640	002	R	4,883.27			4,883.27
70.	12/04/08	R56647	002	R	4,736.77			4,736.77
71.	12/04/08	R56651	002	R	8,534.54	5,689.69-		2,844.85
72.	12/04/08	R56663	002	R	4,796.00			4,796.00
73.	12/05/08	R53428	002				3,776.87-	3,776.87-
74.	12/05/08	R56785	002	R	5,642.88			5,642.88
75.	12/06/08	R56808	002	R	6,369.95			6,369.95
76.	12/06/08	T67308	002	C	2,998.51			2,998.51
77.	12/09/08	R56826	002	R	4,736.77			4,736.77
78.	12/09/08	R56828	002	R	4,883.27			4,883.27
79.	12/10/08	L15991	004	C	71.34			71.34
80.	12/10/08	R56890	002	R	6,348.24			6,348.24
81.	12/10/08	R56892	002	R	4,730.57			4,730.57
82.	12/10/08	R56894	002	R	8,138.78			8,138.78
83.	12/10/08	R56897	002	R	4,768.50			4,768.50
84.	12/11/08	R56927	002	R	6,348.24			6,348.24
85.	12/11/08	R56928	002	R	8,301.55			8,301.55
86.	12/12/08	R56984	002	R	4,000.00			4,000.00
87.	12/16/08	R57072	002	R	2,194.60			2,194.60
88.	12/16/08	R57075	002	R	4,736.77			4,736.77
89.	12/17/08	R57183	002	R	6,348.24	1,410.72-		4,937.52
90.	12/17/08	U53830	002	W	228.90			228.90
91.	12/18/08	R57228	002	R	4,736.77	4,274.77-	4,274.77	4,736.77
92.	12/19/08	R57283	002	R	2,682.29			2,682.29
93.	12/23/08	R57336	002	R	3,650.07			3,650.07
94.	12/23/08	R57337	002	R	4,883.27			4,883.27
95.	12/23/08	R57339	004	R	4,812.42			4,812.42
96.	12/23/08	R57340	002	R	3,776.87			3,776.87
97.	12/23/08	R57344	002	R	5,371.59			5,371.59
98.	12/23/08	R57345	002	R	217.03			217.03

Remit to:

KSM Exchange, LLC

P.O. Box 270360

Oklahoma City, OK 73127

FAX (405) 440-0112

TEL (405) 495-7820



# KIRBY-SMITH

## MACHINERY, INC.



	Date	Invoice	Br	SD	Charges	Adjustments	Payments	Total
99.	12/23/08	T69495	002	C	1,699.61			1,699.61
100.	12/23/08	U54193	002	W	349.61			349.61
101.	12/24/08	R57413	002	R	2,674.95			2,674.95
102.	12/24/08	R57434	002	R	1,551.79			1,551.79
103.	12/24/08	R57435	002	R	4,796.00	4,796.00-	2,239.96	2,239.96
104.	12/24/08	R57441	002	R	5,668.00			5,668.00
105.	12/24/08	R57444	002	R	325.55			325.55
106.	12/24/08	R57445	002	R	4,883.27			4,883.27
107.	12/24/08	R57446	002	R	3,906.61			3,906.61
108.	12/24/08	R57448	002	R	4,730.57			4,730.57
109.	12/24/08	R57449	002	R	162.78			162.78
110.	12/24/08	R57450	002	R	4,736.77	2,336.88-		2,399.89
111.	12/24/08	T69517	002	C	88.57			88.57
112.	12/24/08	T69519	002	C	602.07			602.07
113.	12/26/08	R57479	004	R	4,851.00			4,851.00
114.	12/30/08	R57500	002	R	217.50			217.50
115.	12/30/08	R57511	004	R	4,851.00	1,639.78-		3,211.22
116.	12/31/08	SC035295	001		6,673.94			6,673.94
117.	12/31/08	U53593	002	W	9,544.61			9,544.61
118.	1/06/09	R57699	002	R	6,369.95			6,369.95
119.	1/06/09	R57702	002	R	4,736.77			4,736.77
120.	1/06/09	R57707	002	R	4,883.27			4,883.27
121.	1/06/09	R57727	002	R	5,642.88			5,642.88
122.	1/07/09	R57804	002	R	6,348.24			6,348.24
123.	1/07/09	R57807	002	R	4,730.57			4,730.57
124.	1/07/09	R57812	002	R	4,768.50			4,768.50
125.	1/07/09	U53910	002	W	2,193.20			2,193.20
126.	1/08/09	R57851	002	R	6,348.24			6,348.24
127.	1/08/09	R57852	002	R	8,301.55			8,301.55
128.	1/09/09	R57889	002	R	4,000.00			4,000.00
129.	1/10/09	T69902	002	C	108.95			108.95
130.	1/13/09	R57959	002	R	2,194.60			2,194.60
131.	1/13/09	R57961	002	R	4,736.77			4,736.77
132.	1/16/09	R58117	002	R	2,682.29			2,682.29
133.	1/17/09	R58149	002	R	266.00			266.00
134.	1/20/09	R58172	002	R	3,650.07			3,650.07
135.	1/20/09	R58173	002	R	4,883.27			4,883.27
136.	1/20/09	R58175	002	R	3,776.87			3,776.87
137.	1/20/09	R58181	002	R	217.03			217.03
138.	1/21/09	R58232	002	R	2,674.95	1,182.84-		1,492.11
139.	1/21/09	R58234	004	R	126.00			126.00
140.	1/21/09	T70193	002	C	4,939.13			4,939.13
141.	1/22/09	R58252	002	R	3,906.61			3,906.61
142.	1/22/09	R58253	002	R	4,730.57			4,730.57
143.	1/22/09	R58255	004	R	4,812.42	2,408.57-		2,403.85
144.	1/23/09	R58278	002	R	162.78			162.78
145.	1/23/09	R58287	002	R	5,668.00			5,668.00
146.	1/23/09	U54329	002	W	3,444.17			3,444.17
147.	1/24/09	R58319	002	R	325.55			325.55
148.	1/24/09	R58320	002	R	574.00			574.00
149.	1/27/09	R58354	002	R	218.00			218.00

Remit to:

KSM Exchange, LLC

P.O. Box 270360

Oklahoma City, OK 73127

TEL (405) 495-7820

FAX (405) 440-0112



# KIRBY-SMITH

## MACHINERY, INC.



150.	1/27/09	R58357	002 R	1,551.79	1,036.34-	515.45
151.	1/27/09	T70365	002 C	618.66		618.66
152.	1/29/09	R58423	002 R	4,883.27		4,883.27
153.	1/30/09	R58459	002 R	5,642.88		5,642.88
154.	1/31/09	K80480	001 W	1,292.22		1,292.22
155.	1/31/09	SC035530	001	6,090.08		6,090.08
156.	1/31/09	T70158	002 C	495.28		495.28
157.	1/31/09	U54442	002 W	4,434.91		4,434.91
158.	1/31/09	U54476	002 W	1,313.85		1,313.85
159.	2/05/09	R58530	002 R	6,348.24	5,237.88-	1,110.36
160.	2/05/09	R58531	002 R	337.50		337.50
161.	2/05/09	R58534	002 R	4,730.57	4,388.57-	342.00
162.	2/05/09	R58538	002 R	4,883.27		4,883.27
163.	2/05/09	R58550	002 R	4,768.50	1,238.44-	3,530.06
164.	2/05/09	U54201	002 W	7,694.46		7,694.46
165.	2/05/09	U54444	002 W	11,731.53		11,731.53
166.	2/05/09	U54592	002 W	1,060.89		1,060.89
167.	2/10/09	R58695	002 R	2,194.60	1,920.17-	274.43
168.	2/10/09	R58696	002 R	4,736.77	243.93-	4,492.84
169.	2/10/09	R58697	002 R	112.50		112.50
170.	2/13/09	R54068	002 R		340.68-	340.68-
171.	2/13/09	R58842	002 R	1,804.45	1,727.95-	76.50
172.	2/13/09	R58844	002 R	2,682.29	2,596.79-	85.50
173.	2/14/09	U54730	002 W	2,864.27		2,864.27
174.	2/17/09	R58896	002 R	3,650.07	2,027.82-	1,622.25
175.	2/17/09	R58897	002 R	4,883.27	3,044.01-	1,839.26
176.	2/17/09	R58902	002 R	217.03		217.03
177.	2/18/09	U54344	002 W	6,019.56		6,019.56
178.	2/19/09	R58976	002 R	3,906.61	2,939.48-	967.13
179.	2/19/09	R58977	002 R	216.75		216.75
180.	2/19/09	U54439	002 W	1,507.19		1,507.19
181.	2/20/09	R59012	002 R	162.78		162.78
182.	2/20/09	R59018	002 R	5,668.00	5,533.00-	135.00
183.	2/21/09	R59038	002 R	325.55	108.52-	217.03
184.	2/26/09	R59161	002 R	67.50		67.50
185.	2/27/09	R59203	002 R	5,642.88	3,472.12-	2,170.76
186.	2/28/09	D08098	004 W	2,894.66		2,894.66
187.	2/28/09	SC035745	001	7,562.08		7,562.08
188.	2/28/09	U54841	002 W	3,020.23		3,020.23
189.	3/04/09	R59270	002 R	171.00		171.00
190.	3/04/09	U54543	002 W	6,412.74		6,412.74
191.	3/04/09	U54842	002 W	1,856.82		1,856.82
192.	3/06/09	U54196	002 W	2,836.63		2,836.63
193.	3/11/09	U54873	002 W	2,693.69		2,693.69
194.	3/13/09	U54886	002 W	6,205.09		6,205.09
195.	3/13/09	U54952	002 W	3,970.78		3,970.78
196.	3/14/09	U54665	002 W	7,927.91		7,927.91
197.	3/17/09	R59633	002 R	217.03		217.03
198.	3/19/09	R59703	002 R	216.75		216.75
199.	3/19/09	U54946	002 W	2,444.30		2,444.30
200.	3/24/09	U55037	002 W	3,255.51		3,255.51
201.	3/31/09	SC035955	001	7,383.77		7,383.77

Remit to:

KSM Exchange, LLC

P.O. Box 270360

Oklahoma City, OK 73127

TEL (405) 495-7820

FAX (405) 440-0112

PROOF OF SERVICE  
AFFIDAVIT

APR 15 2009

PATRICIA PRESLEY, COURT CLERK  
by *[Signature]*

*Kerry-Smith Machinery Inc*

Case No. *CJ-2009-3973*

County *Oklahoma*

vs. Date Rec. \_\_\_\_\_

Court Date \_\_\_\_\_

Client *Klim Lan*

*ADK Construction LLC and  
Continental Energy Services*

I, being duly sworn, certify that I received on *4-14*, 20*09* the following documents:

- |  |  |  |  |
|--|--|--|--|
| <input checked="" type="checkbox"/> Summons w/Petition | <input type="checkbox"/> Injunction                | <input type="checkbox"/> Motion to Modify              | <input type="checkbox"/> Interrogations                |
| <input type="checkbox"/> Amended Petition/Complaint    | <input type="checkbox"/> Garnishment               | <input type="checkbox"/> Motion for Leave/Vacate/Enter | <input type="checkbox"/> Brief-Plaintiff's/Defendant's |
| <input type="checkbox"/> Petition/3rd Party Defendant  | <input type="checkbox"/> Subpoena Duces Tecum      | <input type="checkbox"/> Motion/Summary Judgment       | <input type="checkbox"/> Journal Entry                 |
| <input type="checkbox"/> Small Claims Affidavit        | <input type="checkbox"/> Deposition Subpoena       | <input type="checkbox"/> Motion/Deficiency Judgment    | <input type="checkbox"/> Cross/Counter Claim           |
| <input type="checkbox"/> Forcible Entry & Detainer     | <input type="checkbox"/> Witness Fees              | <input type="checkbox"/> Request for Admissions        | <input type="checkbox"/> Lis Pendens                   |
| <input type="checkbox"/> Hearing on Assets             | <input type="checkbox"/> Notice to Take Deposition | <input type="checkbox"/> Request for Production        | <input type="checkbox"/> Letter                        |
| <input type="checkbox"/> Citation for Contempt         | <input type="checkbox"/> Notice of Hearing         | <input type="checkbox"/> Order/Affidavit               | <input type="checkbox"/> Temporary Restraining Order   |
| <input type="checkbox"/> Other _____                   |  |  |  |

*Entry of Appearance*

METHOD OF SERVICE: And served the same according to law in the following manner, to wit:

PERSONAL SERVICE

- ☐ by delivering a true copy of said process personally to \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_
- ☐ by delivering a true copy of said process personally to \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

USUAL PLACE OF RESIDENCE

- ☐ by leaving a true copy of said process for \_\_\_\_\_ with \_\_\_\_\_ a resident/family member, fifteen years of age or older, at \_\_\_\_\_ which is his/her usual place of residence. Date: \_\_\_\_\_ Time: \_\_\_\_\_

CORPORATION/PARTNERSHIP, ETC.

- ☒ by delivering a true copy of said process to *Barbara McCarroll* he/she/it, being the service agent, agent in charge, an officer or partner of said entity, to wit: *ADK Construction LLC* at *2055 E Hwy 270, McAlester, OK* Date: *4-15-09* Time: *1015*

POSTED SERVICE

- ☐ by affixing a true copy of said process to the premises located at \_\_\_\_\_ which is in the possession of the defendant to wit: \_\_\_\_\_

SERVICE BY MAIL

- ☐ by mailing a true copy of said process to \_\_\_\_\_ by certified mail, restricted delivery, return receipt requested, at \_\_\_\_\_ Date: \_\_\_\_\_

NOT FOUND

- ☐ Said process WAS NOT SERVED on the following named for reasons stated: \_\_\_\_\_

OTHER INFORMATION

- ☐ \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

Undersigned declares under penalty of perjury that the foregoing is true and correct.

Notary Public

Commission Exp.

(SEAL)

Name of Server

(date)

Fee for service \$

*65.00*

License No.

*PSS-2007-46*

Mileage \$

*158.40*

Total \$

*223.40*

*265260*

*PO Box 791*

*Cherokee County 73001*

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

Kirby-Smith Machinery, Inc.,

Plaintiff,

v.

AOK Construction, LLC, and  
Continental Energy Services, LLC,

Defendants.

Case No.

**CJ - 2009 - 3493**

SUMMONS

To the above-named Defendant:

AOK Construction, LLC  
Attn: Any agent or officer authorized to receive service of process  
9055 E Old 270 HWY  
McAlester, OK 74501

You have been sued by the above-named Plaintiff, and you are directed to file a written answer to the attached Petition in the Court at the above address within twenty (20) days after service of this summons upon you, exclusive of the day of service. Within the same time, a copy of your answer must be delivered or mailed to the attorney for the Plaintiff. Unless you answer the Petition within the time stated, judgment will be rendered against you with costs of the action.

WITNESS my hand and seal of this Court, affixed on the 13<sup>th</sup> day of April, 2009.

PATRICIA PRESLEY, COURT CLERK

BY:

  
Deputy Court Clerk

(SEAL)

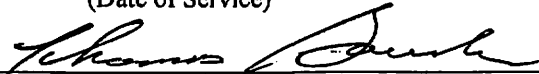
Attorneys for Plaintiff:

Clay P. Booth, OBA #11767  
- for the firm -  
KLINE, KLINE, ELLIOTT & BRYANT, P.C.  
720 NE 63<sup>rd</sup> Street  
Oklahoma City, OK 73105-6405  
Telephone: (405) 848-4448  
Facsimile: (405) 842-4539  
*Lien Claimed*

This summons was served on:

4-15-09

(Date of Service)




(Signature of Person Serving Summons)

**YOU MAY SEEK THE ADVICE OF AN ATTORNEY ON ANY MATTER CONNECTED WITH THIS SUIT OR YOUR ANSWER. SUCH ATTORNEY SHOULD BE CONSULTED IMMEDIATELY SO THAT AN ANSWER MAY BE FILED WITHIN THE TIME LIMIT STATED IN THE SUMMONS.**

FILED IN THE DISTRICT COURT  
OKLAHOMA COUNTY, OKLA.

APR 24 2009

PATRICIA PRESLEY, COURT CLERK  
by  DEPUTY

**IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA**

Kirby-Smith Machinery, Inc.,  
Plaintiff,

v.

AOK Construction, LLC, and  
Continental Energy Services, LLC,  
Defendants.

Case No. CJ-2009-3493

**CERTIFICATE OF SERVICE OF SUMMONS,  
FIRST AMENDED PETITION AND ENTRY OF APPEARANCE**

I certify that pursuant to 12 O.S. § 2004.3(A), a true and correct copy of the *Summons, First Amended Petition and Entry of Appearance*, filed April 14, 2009, were sent to the above-named Defendant, Continental Energy Services, LLC, at the address shown, by UPS overnight delivery service, on the 16<sup>th</sup> day of April, 2009, and receipt thereof on the date shown, as evidenced by the attached electronic receipt signed by the addressee.

Defendant:

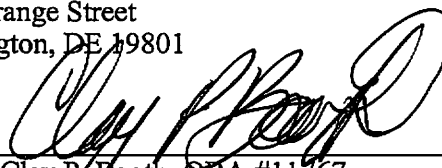
Address Where Served:

Date Received:

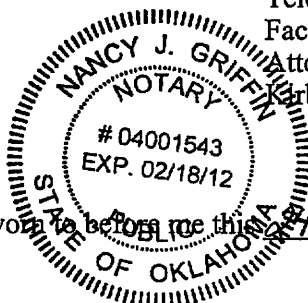
Continental Energy Service, LLC

c/o The Corporation Trust Co.  
1209 Orange Street  
Wilmington, DE 19801

April 17, 2009

  
\_\_\_\_\_  
Clay P. Booth, OBA #11767  
- for the firm -

KLINE, KLINE, ELLIOTT & BRYANT, P.C.  
720 NE 63<sup>rd</sup> Street  
Oklahoma City, OK 73105-6405  
Telephone: (405) 848-4448  
Facsimile: (405) 842-4539  
Attorney for Judgment Creditor and Plaintiff,  
Kirby-Smith Machinery, Inc.



Subscribed and sworn to before me this 16 day of April, 2009.

BY:   
\_\_\_\_\_  
Notary Public

My Commission Expires: 2/18/2012

My Commission Number: 04001543





See instructions on back. Call 1-800-PICK-UPS (800-742-5877) for additional information.

TRACKING NUMBER **1Z F60 946 22 1000 624 6**

**1 SHIPMENT FROM:**

SHIPPER'S UPS ACCOUNT NO.

**F 60946**

REFERENCE NUMBER

**3890.88**

NAME

**Clay Booth**

TELEPHONE

**405-848-4448**

COMPANY

**KLINE, KLINE**

STREET ADDRESS

**720 NE 63RD STREET**

CITY AND STATE

**OKLAHOMA CITY**

ZIP CODE

**OK**

**73105-6410**

**2 EXTREMELY URGENT DELIVERY TO:**

NAME

**Continental Energy Services**

COMPANY

**The Corporation Trust Company**

STREET ADDRESS

**1209 Orange Street**

DEPT./FLR.

CITY AND STATE (INCLUDE COUNTRY IF INTERNATIONAL)

**Wilmington, DE**

ZIP CODE

**19801**



3	WEIGHT	WEIGHT ENTER "LTR" IF LETTER	DIMENSIONAL WEIGHT If Applicable	SHIPPER'S COPY		
	WEIGHT	<b>LTR</b>				
4	TYPE OF SERVICE	<input checked="" type="checkbox"/> NEXT DAY AIR	<input type="checkbox"/> EXPRESS (INT'L)	CHARGES		
		FOR WORLDWIDE EXPRESS SHIPMENTS Mark on "X" in this box if shipment only contains documents of no commercial value.			<input type="checkbox"/> DOCUMENTS ONLY	
5	OPTIONAL SERVICES	<input type="checkbox"/> SATURDAY PICKUP See instructions.	<input type="checkbox"/> SATURDAY DELIVERY See instructions.	\$		
		<input type="checkbox"/> INSURED VALUE Contents are automatically protected up to \$100. For insured value over \$100, see instructions.		\$		
		<input type="checkbox"/> C.O.D. If C.O.D., enter amount to be collected and attach completed UPS C.O.D. tag to package.		\$		
		<input type="checkbox"/> An Additional Handling Charge applies for certain items. See instructions.		\$		
6	ADDITIONAL HANDLING CHARGE					
7	TOTAL CHARGES					
7	METHOD OF PAYMENT	BILL SHIPPER	BILL RECEIVER	BILL THIRD PARTY	CREDIT CARD	CHECK
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8	RECEIVER'S / THIRD PARTY'S UPS ACCT. NO. OR MAJOR CREDIT CARD NO.					EXPIRATION DATE
THIRD PARTY'S COMPANY NAME						
STREET ADDRESS						
CITY AND STATE						
ZIP CODE						
9	SHIPPER'S SIGNATURE					DATE OF SHIPMENT
					<b>4/11/09</b>	
					0101911202609 11/00 W	

[Close Window](#)

## Tracking Summary

### Tracking Numbers

**Tracking Number:** 1Z F60 946 22 1000 624 6  
**Type:** Package  
**Status:** **Delivered**  
**Delivered On:** 04/17/2009  
9:37 A.M.  
**Delivered To:** WILMINGTON, DE, US  
**Signed By:** EVENS  
**Service:** NEXT DAY AIR

Tracking results provided by UPS: 04/21/2009 11:01 A.M. ET

**NOTICE:** UPS authorizes you to use UPS tracking systems solely to track shipments tendered by or for you to UPS for delivery and for no other purpose. Any other use of UPS tracking systems and information is strictly prohibited.

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IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

Kirby-Smith Machinery, Inc.,

Plaintiff,

v.

Case No. CJ-2009-3493

AOK Construction, LLC, and  
Continental Energy Services, LLC,

Defendants.

and

Ritchie Bros. Auctioneers (America), Inc.,  
f/k/a Ritchie Bros. Auctioneers, Inc.,

Garnishee.

FILED IN THE DISTRICT COURT  
OKLAHOMA COUNTY, OKLA.

MAY - 1 2009

PATRICIA PRESLEY, COURT CLERK  
by LV  
DEPUTY

**GARNISHMENT AFFIDAVIT**  
(12 O.S. Supp. 2004 § 1172, as amended)

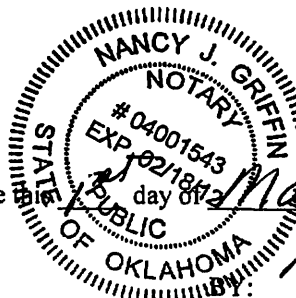
STATE OF OKLAHOMA )  
 ) SS:  
COUNTY OF OKLAHOMA )

I, Clay P. Booth, being duly sworn, states as follows:

1. That he is the attorney for the Plaintiff, Kirby-Smith Machinery, Inc., in the above-styled case;
2. **For Prejudgment Garnishment Only:** That AOK Construction, LLC, and Continental Energy Services, LLC, the Defendants in the above-styled cause, is indebted to me in the amount of \$730,683.24, on my original claim, over and above all offsets.
3. **For Postjudgment Garnishment Only:** That \_\_\_\_\_, the Judgment Debtors and Defendants in the above-styled cause, is indebted to me as follows:
4. That I believe that the above-named Garnishee, Ritchie Bros. Auctioneers (America), Inc., f/k/a Ritchie Bros. Auctioneers, Inc., is indebted to or has property within its possession or under its control, which is not by law exempt from seizure or sale upon execution, belonging to Defendants.
5. That I am *not* seeking a continuing garnishment. That I am seeking a general garnishment.

Clay P. Booth  
Clay P. Booth, OBA #11767 (Attorney's Lien Claimed)  
- for the firm -  
KLINE, KLINE, ELLIOTT & BRYANT, P.C.  
720 NE 63<sup>rd</sup> Street  
Oklahoma City, OK 73105-6405  
Telephone: (405) 848-4448  
Facsimile: (405) 842-4539  
Attorney for Plaintiff, Kirby-Smith Machinery, Inc.

Subscribed and sworn to before me this 1 day of May, 2009.



My Commission Expires: 2/18/2012

My Commission Number: 04001543

EXHIBIT 5



IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT  
OKLAHOMA COUNTY, OKLA.

MAY 22 2009

PATRICIA PRESLEY, COURT CLERK  
by [Signature]  
DEPUTY

KIRBY-SMITH MACHINERY, INC., )

Plaintiff, )

v. )

Case No. CJ-2009-3493

AOK CONSTRUCTION, LLC, and )  
CONTINENTAL ENERGY SERVICES, LLC, )

Defendants. )

**ANSWER OF DEFENDANT AOK CONSTRUCTION, LLC  
TO PLAINTIFF'S FIRST AMENDED PETITION**

COMES NOW Defendant AOK Construction, LLC ("AOK"), and for its Answer to the First Amended Petition (the "Petition") filed herein by Plaintiff Kirby-Smith Machinery, Inc. ("Kirby-Smith"), denies, generally and specifically, each and every material allegation thereof, and, in addition, alleges and states as follows in response to the numbered paragraphs of the Petition:

1. AOK affirmatively alleges that the language, terms and provisions of Exhibit "A" to the Petition speak for themselves, and denies all contrary or additional allegations in paragraph 1.

2. With respect to paragraph 2 of the Petition, AOK admits that it rented certain heavy equipment and accessories from Kirby-Smith, affirmatively alleges that the language, terms and provisions of Exhibit "B" to the Petition speak for themselves, and denies all contrary or additional allegations.

3. Denied.

4. AOK adopts and incorporates the allegations in paragraphs 1 through 3 above.

5. Although the allegations of the Second Cause of Action are not directed at AOK, AOK denies the allegations of paragraph 5.

6. Although the allegations of the Second Cause of Action are not directed at AOK, AOK denies the allegations of paragraph 6.

7. Although the allegations of the Second Cause of Action are not directed at AOK, AOK denies the allegations of paragraph 7.

8. Although the allegations of the Second Cause of Action are not directed at AOK, AOK denies the allegations of paragraph 8.

9. Although the allegations of the Second Cause of Action are not directed at AOK, AOK denies the allegations of paragraph 9.

10. Although the allegations of the Second Cause of Action are not directed at AOK, AOK denies the allegations of paragraph 10.

11. With respect to paragraph 11 of the Petition, AOK admits that Kirby-Smith furnished labor and materials to AOK. AOK denies the remaining allegations in paragraph 11.

12. Denied.

13. Denied.

14. Denied.

15. Denied.

16. Denied.

**MATTERS CONSTITUTING AVOIDANCE OR AFFIRMATIVE DEFENSE**

17. Plaintiff's Petition fails to state a cause of action against AOK.

18. Plaintiff is not the real party in interest.

19. Plaintiff's claims are barred by the doctrines of waiver, laches and estoppel.

WHEREFORE, Defendant AOK prays that Plaintiff take nothing by reason of its Petition, and for AOK's costs incurred in defending Plaintiff's Petition, including reasonable attorney fees, and for such other and further relief to which the Court finds AOK to be entitled.

*Warren F. Bickford*

Warren F. Bickford, OBA #773  
FELLERS, SNIDER, BLANKENSHIP,  
BAILEY & TIPPENS, P.C.  
100 North Broadway, Suite 1700  
Oklahoma City, Oklahoma 73102-8820  
Telephone: (405) 232-0621  
Facsimile: (405) 232-9659  
[wbickford@fellerssnider.com](mailto:wbickford@fellerssnider.com)

**Attorneys for Defendant,  
AOK Construction, LLC**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing instrument forwarded via regular U.S. mail on May 22, 2009, to the following counsel of record:

Clay P. Booth, Esq.  
Kline, Kline, Elliott & Bryant, P.C.  
720 N.E. 63<sup>rd</sup> Street  
Oklahoma City, OK 73105-6405

**Attorneys for Plaintiff**

James K. Larimore, Esq.  
Jennifer K. Christian, Esq.  
Durbin, Larimore & Bialick  
920 N. Harvey  
Oklahoma City, OK 73102-2610

**Attorneys for Defendant,  
Continental Energy Services, L.L.C.**

*Warren F. Bickford*

Warren F. Bickford

485461

FILED IN THE DISTRICT COURT  
OKLAHOMA COUNTY, OKLA.

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

MAY 27 2009

PATRICIA PRESLEY, COURT CLERK  
by                      DEPUTY



KIRBY-SMITH MACHINERY, INC.,

Plaintiff,

vs.

AOK CONSTRUCTION, LLC, and  
CONTINENTAL ENERGY SERVICES, LLC

Defendants.

)  
)  
)  
)  
) Case No. CJ-2009-3493  
)  
)  
)  
)  
)

**ANSWER OF DEFENDANT CONTINENTAL ENERGY SERVICES LLC  
TO PLAINTIFF'S FIRST AMENDED PETITION**

COMES NOW the Defendant, Continental Energy Services, LLC ("CES"), and for its Answer to the First Amended Petition (the "Petition") filed herein by the Plaintiff, Kirby-Smith Machinery, Inc. ("Kirby-Smith"), denies, generally and specifically, each and every material allegation thereof, and, in addition, alleges and states as follows (paragraph references herein correspond to the paragraph numbers of the First Amended Petition):

1. CES is without knowledge sufficient to permit to admit or deny the allegations of paragraph 1 of the Petition and said allegations are therefore denied.
2. CES is without knowledge sufficient to permit to admit or deny the allegations of paragraph 2 of the Petition and said allegations are therefore denied.
3. CES is without knowledge sufficient to permit to admit or deny the allegations of paragraph 3 of the Petition and said allegations are therefore denied.
4. CES adopts and incorporates herein by reference the responses to paragraphs 1 - 4 of the Petition.
5. Denied.
6. Denied.

7. Denied.
8. Denied.
9. Denied.
10. Denied.
11. Denied.
12. Denied.
13. Denied.
14. Denied.
15. Denied.
16. Denied.

**MATTERS CONSTITUTING AFFIRMATIVE DEFENSE AND AVOIDANCE**

17. Plaintiff is not the real party in interest.
18. CES has no contractual or other relationship with Kirby-Smith.
19. Plaintiff's Petition fails to state a cause of action against CES.
20. Plaintiff's Petition is barred by the statute of frauds.
21. Plaintiff's Petition is by the doctrines of waiver, laches and estoppel.

WHEREFORE, having fully answered, CES prays that Kirby-Smith take nothing by reason of its Petition, and for CES's costs incurred in defending this action, including a reasonable attorney's fee, and for such other and further relief to which the Court finds CES entitled in the premises.

DURBIN, LARIMORE & BIALICK

By:

James K. Larimore, OBA #5244  
Jennifer K. Christian, OBA #21628  
920 North Harvey  
Oklahoma City, OK 73102-2610  
Telephone: (405) 235-9584  
Telefax: (405) 235-0551  
Attorneys for the Defendant Continental  
Energy Services, L.L.C.

**CERTIFICATE OF MAILING**

This is to certify that on this 27 day of May, 2009, a true and correct copy of the above and foregoing was mailed, postage prepaid, to the following named counsel of record, to-wit:

Clay P. Booth, OBA #11767  
Kline, Kline, Elliott & Bryant, P.C.  
720 NE 63<sup>rd</sup> Street  
Oklahoma City, OK 73105-6405  
Telephone: (405) 848-4448  
Facsimile: (405) 842-4539  
Attorney for Plaintiff

Warren F. Bickford, OBA #773  
Fellers, Snider, Blankenship, Bailey & Tippens  
100 N. Broadway, Suite 1700  
Oklahoma City, OK 73102-8820  
Telephone: (405) 232-0621  
Facsimile: (405) 232-9659  
Attorney for Defendant AOK Construction, LLC

James K. Larimore  
Jennifer K. Christian

U:\3054\002\Answer CES.wpd

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT  
OKLAHOMA COUNTY, OKLA.

MAY 28 2009

Kirby-Smith Machinery, Inc.,  
Plaintiff,  
v.  
AOK Construction, LLC, and  
Continental Energy Services, LLC,  
Defendants.

PATRICIA PRESLEY, COURT CLERK  
by [Signature] DEPUTY

Case No. CJ-2009-3493

**AGREED ORDER AUTHORIZING ISSUANCE OF PLAINTIFF'S PREJUDGMENT  
GARNISHMENT WITHOUT AN UNDERTAKING**

NOW on this 28 day of May, 2009, the above-captioned case comes before this Court pursuant to the *Notice of Prejudgment Garnishment* filed on May 1, 2009 ("Notice"), by Plaintiff, Kirby-Smith Machinery, Inc. ("Plaintiff" or "KSMI"), and the *Objection to Issuance of Pre-Judgment Garnishment Summons* filed on May 11, 2009 ("Objection"), by Defendants, AOK Construction, LLC ("AOK") and Continental Energy Services, LLC ("CES") (collectively, "Defendants"). Plaintiff appears by counsel, Clay P. Booth of the firm Kline, Kline, Elliott & Bryant P.C., and Defendants appear by counsel, James K. Larimore of the firm Durbin, Larimore & Bialick.

After reviewing the record in this cause and being duly advised in the premises, the Court finds and concludes as follows:

1. On May 1, 2009, KSMI filed a *Garnishment Affidavit* with the District Court of Oklahoma County, pursuant to 12 O.S. § 1172, seeking the issuance of a prejudgment garnishment summons to be issued to Ritchie Bros. Auctioneers (America), Inc., f/k/a Ritchie Bros. Auctioneers, Inc.
2. KSMI's Notice complies with 12 O.S. § 1172(1)(A)(1) and was properly served on AOK and CES.
3. AOK and CES' Objection was filed with written agreement and consent of the parties and is timely.

6



4. AOK and CES agree and consent to the issuance of a prejudgment garnishment summons as requested in KSMI's Notice to the Garnishee, Ritchie Bros. Auctioneers (America), Inc., f/k/a Ritchie Bros. Auctioneers, Inc., pursuant to 12 O.S. § 1172(1)(A)(3).

5. AOK and CES expressly and specifically waive and relinquish the undertaking under 12 O.S. § 1172(1)(A)(3) and (4), and any and all statutory rights and benefits of or to an undertaking under § 1172(1)(A)(3) and (4), and AOK and CES agree and consent to the issuance by this Court of the prejudgment garnishment summons to Garnishee, Ritchie Bros. Auctioneers (America), Inc., f/k/a Ritchie Bros. Auctioneers, Inc.

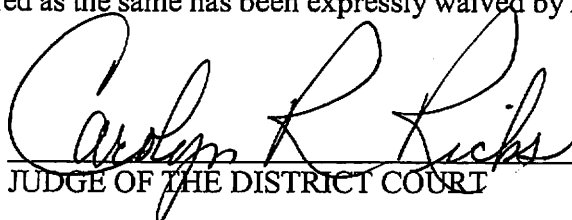
6. Venue and jurisdiction are proper.

7. By entering into this Agreed Order, AOK and CES do not waive any claim or defense regarding KSMI's causes of action, other than defenses of improper venue and lack of jurisdiction.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the foregoing findings and conclusions are adopted and incorporated by reference as the orders, adjudications, and decrees of this Court as if fully set forth herein.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to 12 O.S. § 1172(1)(A)(3), the Court shall issue a prejudgment garnishment summons as requested in KSMI's Notice to the Garnishee, Ritchie Bros. Auctioneers (America), Inc., f/k/a Ritchie Bros. Auctioneers, Inc.

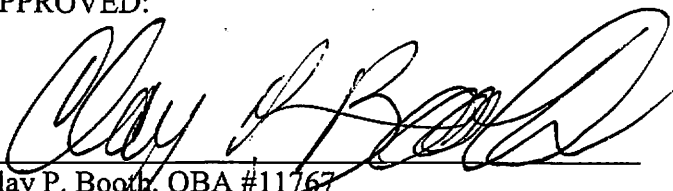
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that no undertaking or bond as provided for under 12 O.S. § 1172(1) is required as the same has been expressly waived by AOK and CES.

  
\_\_\_\_\_  
JUDGE OF THE DISTRICT COURT

*Kirby-Smith Machinery, Inc. v. AOK Construction, LLC, et al.*  
Oklahoma County District Court, Case No. CJ-2009-3493  
Agreed Order Authorizing Issuance of Plaintiff's  
Prejudgment Garnishment Without an Undertaking

3890-088

APPROVED:

  
\_\_\_\_\_  
Clay P. Booth, OBA #11767

- for the firm -

KLINE, KLINE, ELLIOTT & BRYANT, P.C.

720 NE 63<sup>rd</sup> Street

Oklahoma City, OK 73105-6405

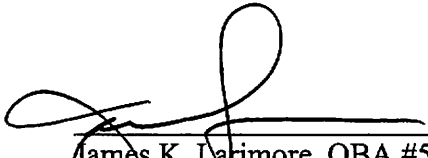
Telephone: (405) 848-4448

Facsimile: (405) 842-4539

Attorneys for Plaintiff,

Kirby-Smith Machinery, Inc.

APPROVED:

  
\_\_\_\_\_  
James K. Larimore, OBA #5244

Jennifer K. Christian, OBA #21628

DURBIN, LARIMORE & BIALICK

920 North Harvey

Oklahoma City, OK 73102-2610

Telephone: (405) 235-9584

Facsimile: (405) 235-0551

Attorneys for Defendants,

AOK Construction, LLC,

and Continental Energy Services, LLC

*Kirby-Smith Machinery, Inc. v. AOK Construction, LLC, et al*

Oklahoma County District Court, Case No. CJ-2009-3493

Agreed Order Authorizing Issuance of Plaintiff's

Prejudgment Garnishment Without an Undertaking

3890-088

Rm

FILED IN THE DISTRICT COURT  
OKLAHOMA COUNTY, OKLA.

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

JUN - 3 2009

PATRICIA PRESLEY, COURT CLERK  
by  DEPUTY

Kirby-Smith Machinery, Inc.,

Plaintiff,

v.

Case No. CJ-2009-3493

AOK Construction, LLC, and  
Continental Energy Services, LLC,

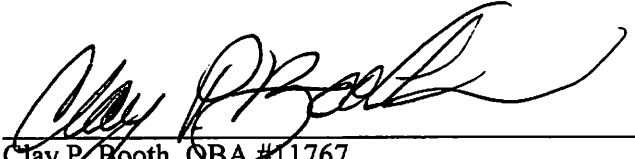
Defendants.

**CERTIFICATE OF SERVICE OF AGREED ORDER AUTHORIZING ISSUANCE OF  
PLAINTIFF'S PREJUDGMENT GARNISHMENT WITHOUT AN UNDERTAKING**

I certify that on the 2<sup>nd</sup> of June, 2009, a true and correct copy of the *Agreed Order Authorizing Issuance of Plaintiff's Prejudgment Garnishment Without an Undertaking*, filed on May 28, 2009, was mailed by regular, first class United States mail, postage fully pre-paid, to the following:

James K. Larimore, OBA #5244  
Jennifer K. Christian, OBA #21628  
DURBIN, LARIMORE & BIALICK  
920 North Harvey  
Oklahoma City, OK 73102-2610  
Telephone: (405) 235-9584  
Facsimile: (405) 235-0551  
Attorneys for Defendants,  
AOK Construction, LLC,  
and Continental Energy Services, LLC

Warren F. Bickford  
Fellers, Snider, Blankenship,  
Bailey & Tippens, P.C.  
100 North Broadway, Suite 1700  
Oklahoma City, OK 73102

  
Clay P. Booth, OBA #11767  
- for the firm -  
KLINE, KLINE, ELLIOTT & BRYANT, P.C.  
720 NE 63<sup>rd</sup> Street  
Oklahoma City, OK 73105-6405  
Telephone: (405) 848-4448  
Facsimile: (405) 842-4539  
Attorney for Plaintiff, Kirby-Smith Machinery, Inc.

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

Kirby-Smith Machinery, Inc.,

Plaintiff,

v.

Case No. CJ-2009-3493

AOK Construction, LLC, and  
Continental Energy Services, LLC,

Defendants.

and

Ritchie Bros. Auctioneers (America), Inc.,  
f/k/a Ritchie Bros. Auctioneers, Inc.,

Garnishee.

FILED IN THE DISTRICT COURT  
OKLAHOMA COUNTY, OKLA.  
JUN 10 2009  
PATRICIA PREBBLEY, COURT CLERK  
DEPUTY

NONCONTINUING AND GENERAL GARNISHEE'S ANSWER/AFFIDAVIT

STATE OF NEBRASKA )  
COUNTY OF LANCASTER ) SS

JAMES J OLNSTEAD, being duly sworn deposes and says:  
(Affiant)

IF GARNISHEE IS AN INDIVIDUAL:

That he/she is the garnishee herein. That he/she does business in the name of \_\_\_\_\_

IF GARNISHEE IS A PARTNERSHIP:

That he is a member of \_\_\_\_\_, a partnership  
composed of garnishee and \_\_\_\_\_

IF GARNISHEE IS A CORPORATION:

That he is the SECRETARY, of RITCHIE BROS. AUCTIONEERS (AMERICA) INC  
(Official Title) (Garnishee)

a corporation, organized under the laws of the State of WASHINGTON

Garnishee or \_\_\_\_\_, on behalf of garnishee having been served with a  
garnishment summons on the 8TH day of JUNE, 2009, and having knowledge of the facts and being  
sworn, states:

1. At the time of the service of the garnishment summons, or upon the date it became effective, the garnishee was not indebted to Defendants for any amount of money nor did the garnishee have possession or control of any property, money, goods, chattels, credits, negotiable instruments or effects belonging to Defendants or in which the Defendants had an interest because the employee/individual/Defendants were:

- ☐ Not Employed  
☐ Employed, but no earnings due ("earnings" means any form of payment to an individual including, but not limited to, salary, wages, commission, or other compensation, but does not include reimbursements for travel expenses for state employees)—specify reason: \_\_\_\_\_  
☐ Garnishee did not have in its possession or control any of said money or property, goods, chattels, credits, negotiable instruments or effects belonging to Defendants or in which Defendants had an interest.  
☒ Other, specify: N/A

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

Kirby-Smith Machinery, Inc.,

Plaintiff,

v.

Case No. CJ-2009-3493

AOK Construction, LLC, and  
Continental Energy Services, LLC,

Defendants.

and

Ritchie Bros. Auctioneers (America), Inc.,  
f/k/a Ritchie Bros. Auctioneers, Inc.,

Garnishee.

FILED IN THE DISTRICT COURT  
OKLAHOMA COUNTY, OKLA.

MAY - 1 2009

GARNISHMENT AFFIDAVIT  
(12 O.S. Supp. 2004 § 1172, as amended)

PATRICIA PRESLEY, COURT CLERK  
by \_\_\_\_\_  
DEPUTY

STATE OF OKLAHOMA )

COUNTY OF OKLAHOMA )

SS:

1, Clay P. Booth, being duly sworn, states as follows:

1. That he is the attorney for the Plaintiff, Kirby-Smith Machinery, Inc., in the above-styled case;
2. **For Prejudgment Garnishment Only:** That AOK Construction, LLC, and Continental Energy Services, LLC, the Defendants in the above-styled cause, is indebted to me in the amount of \$730,683.24, on my original claim, over and above all offsets.
3. **For Postjudgment Garnishment Only:** That \_\_\_\_\_, the Judgment Debtors and Defendants in the above-styled cause, is indebted to me as follows:
4. That I believe that the above-named Garnishee, Ritchie Bros. Auctioneers (America), Inc., f/k/a Ritchie Bros. Auctioneers, Inc., is indebted to or has property within its possession or under its control, which is not by law exempt from seizure or sale upon execution, belonging to Defendants.
5. That I am *not* seeking a continuing garnishment. That I am seeking a general garnishment.

Clay P. Booth  
Clay P. Booth, OBA #11767 (Attorney's Lien Claimed)

- for the firm -

KLINE, KLINE, ELLIOTT & BRYANT, P.C.

720 NE 63<sup>rd</sup> Street

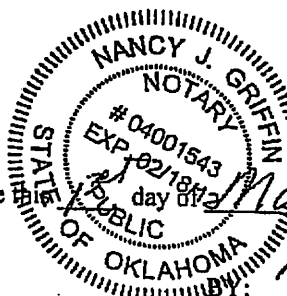
Oklahoma City, OK 73105-6405

Telephone: (405) 848-4448

Facsimile: (405) 842-4539

Attorney for Plaintiff, Kirby-Smith Machinery, Inc.

Subscribed and sworn to before me this 18 day of May, 2009.



My Commission Expires: 2/18/2012

My Commission Number: 04001543

Nancy J. Griffin  
Notary Public

2. At the time of service of the garnishment summons or upon the date it became effective, the garnishee was indebted to Defendants or had possession or control of the following property, money, goods, chattels, credits, negotiable instruments or effects belonging to Defendants as follows:

[ ] Earnings as shown on the Calculation for Garnishment of Earnings Form (on next page) which is incorporated by reference into this Answer;  
 [X] Other, specify: RITCHIE BROS. AUCTIONEERS AS GARNISHEE IS HOLDING DISPUTE FUNDS OF \$783,000 BUT HAS BEEN DIRECTED BY BOTH PARTIES TO PAY SUCH MONIES TO BANK OF AMERICA.

3. Nothing has been withheld due to a prior garnishment or continuing garnishment which will expire on N/A, and is in Case No. \_\_\_\_\_ in the District Court of \_\_\_\_\_ County, Oklahoma.

4. On the 8TH day of JUNE, 2009, the garnishee mailed a copy of the Notice of Garnishment & Exemptions and Application for Hearing by first-class mail to Defendants at:

720 NE 63RD ST. OKLAHOMA CITY OK 73105-6405  
 Street Address City/State Zip Date Mailed 6/9/09

or hand-delivered the same to Defendants at:

Defendants \_\_\_\_\_ Place \_\_\_\_\_

5. The garnishee makes the following claim of exemption on the part of Defendants, or has the following objections, defenses, or setoffs to Plaintiff's right to apply garnishee's indebtedness to Defendants upon Plaintiff's claim as follows:  
N/A

Check here if additional pages are necessary [ ].

Dated this 8TH day of JUNE, 2009.

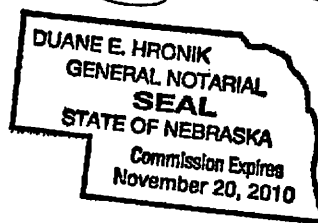
By: James J. O'Connell  
 Title: SECRETARY

Subscribed and sworn to before me this 8th day of June, 2009.

[Signature]  
 Notary Public

My Commission Expires: Nov 20, 2010

My Commission Number: n/a



WHEN COMPLETED, MAIL ORIGINAL ANSWER TO:

PATRICIA PRESLEY, COURT CLERK  
 409 OKLAHOMA COUNTY OFFICE BUILDING  
 321 ROBERT S. KERR  
 OKLAHOMA CITY, OK 73102


YOU MUST SEND YOUR CHECK FOR THE AMOUNT GARNISHED MADE PAYABLE TO THE ORDER OF THE ATTORNEY FOR PLAINTIFF WITH A COPY OF YOUR ANSWER TO THE ATTORNEY FOR PLAINTIFF:

CLAY P. BOOTH  
 KLINE, KLINE, ELLIOTT & BRYANT, P.C.  
 720 NE 63RD STREET  
 OKLAHOMA CITY, OK 73105-6405  
 ATTORNEYS FOR PLAINTIFF,  
 KIRBY-SMITH MACHINERY, INC.

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT  
OKLAHOMA COUNTY, OKLA.

JUN 17 2009

PATRICIA PRESLEY, COURT CLERK  
by  DEPUTY

Kirby-Smith Machinery, Inc.,

Plaintiff,

v.

Case No. CJ-2009-3493

AOK Construction, LLC, and  
Continental Energy Services, LLC,

Defendants,

and

Ritchie Bros. Auctioneers (America), Inc.,  
f/k/a Ritchie Bros. Auctioneers, Inc.

Garnishee,

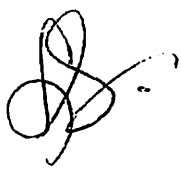
and

Bank of America, N.A.,

Intervenor.

**AGREED ORDER GRANTING BANK OF AMERICA, N.A.'S MOTION TO  
INTERVENE AND AUTHORIZING DISBURSEMENT OF GARNISHED FUNDS**

NOW on this 17 day of June, 2009, the above-captioned case comes before this Court pursuant to the *Motion to Intervene* filed on June 8, 2009 ("Motion"), by Intervenor, Bank of American, N.A. Plaintiff, Kirby-Smith Machinery, Inc. ("KSMI"), appears by counsel, Clay P. Booth of the firm Kline, Kline, Elliott & Bryant P.C.; Defendant, AOK Construction, LLC ("AOK"), appears by counsel, Warren F. Bickford of the firm Fellers, Snider, Blankenship, Bailey & Tippins; Defendant, Continental Energy Services, LLC ("CES"), appears by counsel, James K. Larimore of the firm Durbin, Larimore & Bialick; and Intervenor, Bank of America, N.A. ("BOA"),





appears by counsel

After reviewing the record in this cause and being duly advised in the premises, the Court finds and concludes as follows:

1. On April 13, 2009, KSMI commenced this case against AOK and CES seeking judgment in the amount of \$730,683.24, plus interest, costs, and attorneys' fees.

2. On May 1, 2009, KSMI filed a *Garnishment Affidavit* with the District Court of Oklahoma County, pursuant to 12 O.S. § 1172, seeking the issuance of a prejudgment garnishment summons to be issued to Ritchie Bros. Auctioneers (America), Inc., f/k/a Ritchie Bros. Auctioneers, Inc.

3. On May 1, 2009, KSMI filed its *Notice of Prejudgment Garnishment* ("Notice"), which Notice complies with 12 O.S. § 1172(1)(A)(1) and was properly served on AOK and CES.

4. On May 11, 2009, AOK and CES filed their *Objection to Issuance of Prejudgment Garnishee Summons*, which was filed with written agreement and consent of the parties and is timely.

5. On May 28, 2009, an *Agreed Order Authorizing Issuance of Plaintiff's Prejudgment Garnishment Without an Undertaking* was rendered and filed in the case, pursuant to which KSMI properly served the *Prejudgment General Garnishment Summons, Garnishment Affidavit, General Garnishee's Answer/Affidavit, Notice of Garnishment and Exemptions, Claim for Exemption and Request for Hearing*, and all pleadings and documents required by law, upon Garnishee, Ritchie Bros. Auctioneers (America), Inc., f/k/a Ritchie Bros. Auctioneers, Inc.

6. The Garnishee, Ritchie Bros. Auctioneers (America), Inc., f/k/a Ritchie Bros. Auctioneers, Inc., is indebted to or has property within its possession or under its control, which is not by law exempt from seizure or sale upon execution, belonging to AOK in the amount of



\$730,683.24, over and above all offsets ("Garnished Funds").

7. BOA is claiming a lien in and to the Garnished Funds.

8. KSMI holds and is claiming a garnishment lien in and to the Garnished Funds.

9. Counsel for the parties hereto and have reached an agreement in regard to the Motion and the Garnished Funds as referenced in paragraph 5 above, which agreement is set forth in this *Agreed Order Granting Bank of America, N.A.'s Motion to Intervene and Authorizing Disbursement of Garnished Funds* ("Agreed Order").

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the foregoing findings and conclusions are adopted and incorporated by reference as the orders, adjudications, and decrees of this Court as if fully set forth herein.


IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that BOA's Motion is granted.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Garnishee, Ritchie Bros. Auctioneers (America), Inc., f/k/a Ritchie Bros. Auctioneers, Inc, is hereby authorized and directed to disburse the Garnished Funds to BOA, subject to the following orders of this Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the parties' agreement, this Agreed Order or the disbursement of the Garnished funds are not, and do not constitute: (a) a waiver, relinquishment or discharge, in whole or in part, of whatever type, kind, nature, character and description, of the claimed liens of KSMI and BOA in and to the Garnished Funds; and (b) a determination or adjudication of KSMI and BOA's right, title, lien, claim or interest in and to the Garnished Funds, including the validity, priority and amount of KSMI or BOA's liens, all of which are reserved for further determination by this Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that notwithstanding anything

in this Agreed Order to the contrary, the Garnished Funds shall be deemed, and are, held *in custodia legis*, until the further order of this Court.

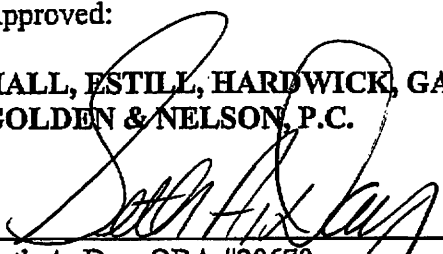
  
\_\_\_\_\_  
JUDGE OF THE DISTRICT COURT

*Kirby-Smith Machinery, Inc. v. AOK Construction, LLC, et al.*  
Oklahoma County District Court, Case No. CJ-2009-3493  
Agreed Order Granting Bank of America, N.A.'s  
Motion to Intervene and Authorizing Disbursement  
of Garnished Funds

3890-088

Approved:

**HALL, ESTILL, HARDWICK, GABLE,  
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*Kirby-Smith Machinery, Inc. v. AOK Construction, LLC, et al.*  
Oklahoma County District Court, Case No. CJ-2009-3493  
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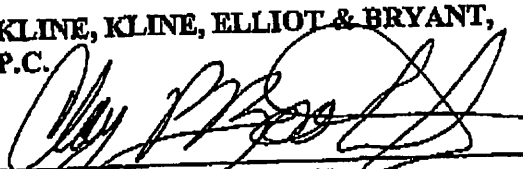
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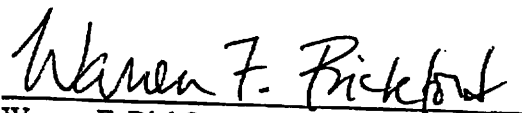
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**COUNSEL FOR AOK CONSTRUCTION,  
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## IN THE DISTRICT COURT IN AND FOR OKLAHOMA COUNTY, OKLAHOMA

<p>Kirby-Smith Machinery, Inc.,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>AOK Construction, LLC, and Continental Energy Services, LLC,</p> <p style="text-align: center;">Defendants.</p>	<p>No. CJ-2009-3493 (Civil relief more than \$10,000: <b>BREACH OF AGREEMENT - CONTRACT</b>)</p> <p>Filed: 04/13/2009</p> <p>Judge: Ricks, Carolyn R.</p>
--	---

### Parties

AOK Construction, L.L.C. , Defendant  
Continental Energy Services, L.L.C. , Defendant  
Kirby-Smith Machinery, Inc. , Plaintiff

### Attorneys

#### Attorney

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CHRISTIAN, JENNIFER K(Bar # 21628)  
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OKLAHOMA CITY, OK 73102

LARIMORE, JAMES K(Bar # 5244)  
920 N Harvey  
Oklahoma City, OK 73102

#### Represented Parties

AOK Construction, L.L.C.,

Kirby-Smith Machinery, Inc.,

Continental Energy Services, L.L.C.,

Continental Energy Services, L.L.C.,  
AOK Construction, L.L.C.,

### Events

#### Event

Thursday, July 16, 2009 at 13:30 PM  
JAMES LARIMORE AND JENNIFER CHRISTIAN'S MOTION TO WITHDRAW AS  
ATTNYS FOR DEFENDANT(MOD)

#### PartyDocket

Carolyn R.  
Ricks

#### Reporter

### Issues

For cases filed before 1/1/2000, ancillary issues may not appear except in the docket.

**Issue # 1.** Issue: BREACH OF AGREEMENT - CONTRACT (CONTRACT)  
 Filed by: Kirby-Smith Machinery, Inc.  
 Filed Date: 04/13/2009

**Party Name:** **Disposition Information:**

Pending.

## Docket

Date	Code	Count	Party	Serial #	Entry Date		
04-13-2009	TEXT	1		57162877	Apr 13 2009 4:37:06:930PM	-	\$ 0.00
	CIVIL RELIEF MORE THAN \$10,000 INITIAL FILING.						
04-13-2009	CONTRACT	-		57162879	Apr 13 2009 4:37:07:000PM	Realized	\$ 0.00
	BREACH OF AGREEMENT - CONTRACT						
04-13-2009	DMFE	-		57162880	Apr 13 2009 4:37:07:030PM	Realized	\$ 2.00
	DISPUTE MEDIATION FEE(\$ 2.00)						
04-13-2009	PFE1	-		57162881	Apr 13 2009 4:37:07:030PM	Realized	\$ 150.00
	PETITION(\$ 150.00)						
04-13-2009	PFE7	-		57162882	Apr 13 2009 4:37:07:030PM	Realized	\$ 6.00
	LAW LIBRARY FEE(\$ 6.00)						
04-13-2009	OCISR	-		57162883	Apr 13 2009 4:37:07:030PM	Realized	\$ 25.00
	OKLAHOMA COURT INFORMATION SYSTEM REVOLVING FUND(\$ 25.00)						
04-13-2009	CCADMIN	-		57162884	Apr 13 2009 4:37:07:030PM	Realized	\$ 1.00
	COURT CLERK ADMINISTRATIVE FEE ON COLLECTIONS(\$ 1.00)						
04-13-2009	CHAB	-		57162885	Apr 13 2009 4:37:07:030PM	Realized	\$ 10.00
	C.H.A.B. STATUTORY FEE(\$ 10.00)						
04-13-2009	AGVSU	-		57162886	Apr 13 2009 4:37:07:030PM	Realized	\$ 3.00
	ATTORNEY GENERAL VICTIM SERVICES UNIT(\$ 3.00)						
04-13-2009	CCADMIN03	-		57162887	Apr 13 2009 4:37:07:030PM	Realized	\$ 0.30
	COURT CLERK ADMINISTRATIVE FEE ON COLLECTIONS(\$ 0.30)						
04-13-2009	LTF	-		57162888	Apr 13 2009 4:37:07:330PM	Realized	\$ 10.00



LENGTHY TRIAL FUND(\$ 10.00)

04-13-2009	SMF	-	57162889	Apr 13 2009 4:37:07:400PM	Realized	\$ 5.00
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SUMMONS FEE (CLERKS FEE)(\$ 5.00)

04-13-2009	SMF	-	57162897	Apr 13 2009 4:37:42:650PM	Realized	\$ 5.00
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SUMMONS FEE (CLERKS FEE)(\$ 5.00)

04-13-2009	P	-	57170325	Apr 14 2009 2:00:15:050PM	-	\$ 0.00
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PETITION

 Document Available at Court Clerk's Office

04-13-2009	EAA	-	57170973	Apr 14 2009 2:30:17:260PM	-	\$ 0.00
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ENTRY OF APPEARANCE BY COUNSEL; FOR PLAINTIFF BY ATTNY CLAY BOOTH

 Document Available (#1009306652)

04-13-2009	TEXT	-	57162878	Apr 13 2009 4:37:06:970PM	-	\$ 0.00
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OCIS HAS AUTOMATICALLY ASSIGNED JUDGE RICKS, CAROLYN R. TO THIS CASE.

04-13-2009	ACCOUNT	-	57162955	Apr 13 2009 4:42:01:190PM	-	\$ 0.00
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RECEIPT # 2009-2100692 ON 04/13/2009.

PAYOR: KLINE KLINE ELLIOTT TOTAL AMOUNT PAID: \$ 217.30.

LINE ITEMS:

CJ-2009-3493: \$160.00 ON AC01 CLERK FEES.

CJ-2009-3493: \$3.00 ON AC07 ATTORNEY GENERAL VICTIM SERVICES UNIT.

CJ-2009-3493: \$6.00 ON AC23 LAW LIBRARY FEE.

CJ-2009-3493: \$1.30 ON AC31 COURT CLERK REVOLVING FUND.

CJ-2009-3493: \$2.00 ON AC64 DISPUTE MEDIATION FEES.


CJ-2009-3493: \$10.00 ON AC69 CHILD ABUSE MULTIDISCIPLINARY FEE.

CJ-2009-3493: \$25.00 ON AC79 OCIS REVOLVING FUND.

CJ-2009-3493: \$10.00 ON AC81 LENGTHY TRIAL FUND.


04-14-2009	P	-	57187874	Apr 16 2009 8:24:52:003AM	-	\$ 0.00
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FIRST AMENDED PETITION

 Document Available at Court Clerk's Office

04-15-2009	SMS	-	57221218	Apr 20 2009 9:40:07:427AM	-	\$ 0.00
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SUMMONS/PETITION /ENTRY OF APPRENECE RETURNED, SERVED: AOK CONSTRUCTION , LLC - ATTN: ANY AGENT OR OFFICER AUTHORIZED TO RECEIVE SERVICE OF PROCESS - BY DELIVERING TO BARBARA, MCCURREY - SERVICE AGENT - ON 4-15-09




 Document Available (#1009407781)







05-01-2009	GAPJ	-	57345882	May 1 2009 4:02:11:650PM	Realized	\$ 15.00
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GARNISHMENT AFFIDAVIT W/SUMMONS (POST JUDGMENT)(\$ 15.00)

05-01-2009	OCISR	-	57345883	May 1 2009 4:02:11:800PM	Realized	\$ 25.00
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OKLAHOMA COURT INFORMATION SYSTEM REVOLVING FUND(\$ 25.00)

05-01-2009	CCADMIN	-	57345884	May 1 2009 4:02:11:840PM	Realized	\$ 1.00
COURT CLERK ADMINISTRATIVE FEE ON COLLECTIONS(\$ 1.00)						
05-01-2009	CHAB	-	57345885	May 1 2009 4:02:11:970PM	Realized	\$ 10.00
C.H.A.B. STATUTORY FEE(\$ 10.00)						
05-01-2009	AGVSU	-	57345886	May 1 2009 4:02:12:050PM	Realized	\$ 3.00
ATTORNEY GENERAL VICTIM SERVICES UNIT(\$ 3.00)						
05-01-2009	CCADMIN03	-	57345887	May 1 2009 4:02:12:160PM	Realized	\$ 0.30
COURT CLERK ADMINISTRATIVE FEE ON COLLECTIONS(\$ 0.30)						
05-01-2009	NO	-	57368472	May 5 2009 12:56:54:827PM	-	\$ 0.00
NOTICE OF PREJUDGMENT GARNISHMENT						
05-01-2009	APLI	-	57368477	May 5 2009 12:57:20:357PM	-	\$ 0.00
APPLICATION TO APPOINT A RECEIVER						
05-01-2009	ACCOUNT	-	57345946	May 1 2009 4:03:24:730PM	-	\$ 0.00
RECEIPT # 2009-2114402 ON 05/01/2009. PAYOR:KLINE KLINE TOTAL AMOUNT PAID: \$54.30. LINE ITEMS: CJ-2009-3493: \$15.00 ON AC01 CLERK FEES. CJ-2009-3493: \$3.00 ON AC07 ATTORNEY GENERAL VICTIM SERVICES UNIT. CJ-2009-3493: \$1.30 ON AC31 COURT CLERK REVOLVING FUND. CJ-2009-3493: \$10.00 ON AC69 CHILD ABUSE MULTIDISCIPLINARY FEE. CJ-2009-3493: \$25.00 ON AC79 OCIS REVOLVING FUND.						
05-05-2009	A	-	57382912	May 6 2009 1:13:48:457PM	-	\$ 0.00
RESERVATION OF ADDITION TIME TO PLEAD OR ANSWER						
05-05-2009	EAA	-	57386324	May 6 2009 3:16:03:387PM	-	\$ 0.00
ENTRY OF APPEARANCE BY JAMES LARIMORE ATTN Y FOR DEFENDANT, AOK CONSTRUCTION, LLC AND CONTINENTAL ENERGY SERVICES, LLC  <a href="#">Document Available (#1009306102)</a>						
05-11-2009	OBJ	-	60031954	May 27 2009 10:58:59:830AM	-	\$ 0.00
OBJECTION TO ISSUANCE OF PRE-JUDGMENT GARNISHEE SUMMONS BY ATTN Y JAMES LARIMORE  <a href="#">Document Available (#1009312381)</a>						
05-22-2009	EAA	-	60097274	May 27 2009 10:58:46:350AM	-	\$ 0.00
ENTRY OF APPEARANCE BY WARREN BICKFORD ATTN Y FOR DEFENDANT, AOK CONSTRUCTION, LLC  <a href="#">Document Available (#1009585321)</a>						

05-22-2009 A	-	60100565	May 27 2009 1:41:06:073PM	-	\$ 0.00
ANSWER OF DEFENDANT AOK CONSTRUCTION, LLC TO PLAINTIFF'S FIRST AMENDED PETITION BY ATTNY WARREN BICKFORD					
 <a href="#">Document Available (#1009312766)</a>					
<hr/>					
05-27-2009 A	-	Continental Energy Services, LLC.	60112264	May 28 2009 11:54:37:203AM	- \$ 0.00
ANSWER OF DEFENDANT CONTINENTAL ENERGY SERVICES LLC TO PLAINTIFF'S FIRST AMENDED PETITION THROUGH ATTYS JAMES K. LARIMORE AND JENNIFER K. CHRISTIAN					
 <a href="#">Document Available (#1009585559)</a>					
<hr/>					
05-28-2009 AGORD	-		60144554	Jun 1 2009 3:39:35:123PM	- \$ 0.00
AGREED ORDER AUTHORIZING ISSUANCE OF PLAINTIFF'S PREJUDGMENT GARNISHMENT WITHOUT AN UNDERTAKING/JUDGE RICKS					
 <a href="#">Document Available (#1009552257)</a>					
<hr/>					
06-03-2009 CT	-		60172819	Jun 4 2009 9:48:43:037AM	- \$ 0.00
CERTIFICATE OF SERVICE OF AGREED ORDER AUTHORIZING ISSUANCE OF PLAINTIFF'S PREJUDGMENT GARNISHMENT WITHOUT AN UNDERTAKING					
<hr/>					
06-05-2009 MO	-		60203020	Jun 8 2009 1:11:09:280PM	- \$ 0.00
MOTION TO WITHDRAW AS ATTORNEY FOR DEFENDANT AOK CONSTRUCTION LLC					
<hr/>					
06-05-2009 MO	-		60206368	Jun 8 2009 3:54:52:970PM	- \$ 0.00
UNOPPOSED MOTION TO INTERVENE					
<hr/>					
06-10-2009 ATG	-		60250365	Jun 12 2009 9:03:49:550AM	- \$ 0.00
ANSWER TO GARNISHMENT BY RITCHIE BROS AUCTIONEERS(AMERICA) INC					
 <a href="#">Document Available at Court Clerk's Office</a>					
<hr/>					
06-10-2009 ATG	-		60254388	Jun 12 2009 11:35:27:897AM	- \$ 0.00
ANSWER TO GARNISHMENT BY RITCHIE BROS AUCTIONER					
 <a href="#">Document Available at Court Clerk's Office</a>					
<hr/>					
06-17-2009 AGORD	-		60320279	Jun 19 2009 9:54:22:480AM	- \$ 0.00
AGREED ORDER GRANTING BANK OF AMERICA N.A MOTION TO INTERVENE AND AUTHORIZE DISBURSEMENT OF GARNISHED FUNDS/JUDGE RICKS					
 <a href="#">Document Available (#1009735076)</a>					
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06-29-2009 NOB	-		60406999	Jun 29 2009 1:47:00:687PM	- \$ 0.00
SUGGESTION OF BANKRUPTCY					
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Report Generated by The Oklahoma Court Information System at July 7, 2009 15:26 PM

End of Transmission.